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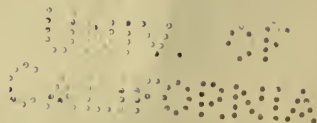


# INTRODUCTION TO JURISTIC PSYCHOLOGY

BY  
PRABODH CHANDRA BOSE, M.A., B.L.,

PROVINCIAL JUDICIAL SERVICE, BENGAL ; LATE PROFESSOR OF  
LOGIC AND HISTORY, RIPON COLLEGE, CALCUTTA ;  
AUTHOR OF "A MANUAL OF LOGIC."

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## FOREWORD

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The object of this Introduction to Juristic Psychology is to suggest *a syllabus of studies on the subject for law-students and for research-workers*. The syllabus can not be complete and satisfactory in the author's first attempt to systematise. It will also grow with the growth of the science. Juristic Psychology is a science in the making. It can be built up only by the patient long labour of innumerable workers, hearty co-operation of all classes of people engaged in the judicial and non-judicial administration of law, and help of the general public. Considerable observation and experimental work, copious and exhaustive collection of statistics and their patient and intelligent study, are necessary. Each country and civilisation may give rise to a special branch of juristic psychology. A fully-developed juristic psychology is expected to be of material help in practical legislation and in judicial and non-judicial practical administration in every political state. The object of the present work is to suggest and stimulate thought on the subject and to be an introductory basis for instruction of pupils, and for research work. The present work is more like a digest and is defective owing to absence of copious illustrations from reported cases, incidents of history, personal experience and other sources, to explain vitalise and bring home the various facts and principles stated in this book. This defect may be supplied by the teacher of the learners. Such copious illustrations would have made this treatise run into several volumes.

The author had not the time necessary to complete such a big work. The book was written during the recess of a combined privilege leave and furlough. The author has a mind to continue the work if Providence grants him leisure in future and spares in him health and capacity necessary for the purpose. But the author will think himself amply repaid for his labour, if the present work inspires at least a few with a zeal for study and research in the department of Juristic psychology and to some extent impresses the Bench and the Bar



with the desirability of systematic special study of the psychological side of juristic life. The author takes this opportunity to convey his grateful thanks and express his indebtedness to all writers and thinkers whose works—consciously or sub-consciously—helped in the preparation of this humble volume. The author had a very heavy burden of official duties on his shoulders away from Calcutta and also for some time suffered from bad health, when the present work was going through the Press; the original manuscript had been badly written and the author had no time to make a fair copy of the same; he could not give requisite personal attention during the printing of the work; mistakes, therefore, crept in. The author hopes that the generous public would condone the printing blemishes of this first edition of the work.

The present work is not a complete and exhaustive treatise. It neither gives a complete and exhaustive syllabus nor touches all the topics that require to be dealt in a complete treatise on the subject. Nothing has been said separately on the Psychology of the minds of the various classes of people engaged in the non-judicial administration of law. The Psychology of Legislation, is, in itself, a large subject; it has been only touched in this book. The Psychology of the mind of the people affected by judicial and non-judicial administration of law, is itself, also a large subject. The author confesses that this work is a very defective and incomplete work, and his only excuse is that it is his first endeavour on the subject, done within a time at his disposal.

45, Amherst Street,  
CALCUTTA;  
*30th December 1916.*

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# INTRODUCTION TO JURISTIC PSYCHOLOGY

## CHAPTER I.

### THE NATURE AND SCOPE OF JURISTIC PSYCHOLOGY.

§1. Juristic psychology is the study of the psychology of Human behaviour from the standpoint of the maker, the administrator, the interpreter, the expositor of law ; of one who in any way deals with law or is affected by law.

SECTION I.  
Nature of  
Juristic  
psychology.

Human behaviour is not a mere result of mechanical forces, but means conduct of the Human Mind as expression of the life of the organism to which the Human Mind belongs, and of which life, the Human Mind is the highest form ; it may be for realisation of such conscious and subconscious ends which are realised through the Human behaviour. The Laws of the Jurist exist for regulating Human behaviour. The expression of life, follows various lines of life-activity ; those in human mind appear as the conative tendencies producing all sorts of mental activity of Man. The teleological view can not explain all behaviour. Human behaviour is wider than teleology and deeper, and higher than mere resultants of mechanical forces.

Human  
behaviour.

Human behaviour is the work of the Human Mind functioning in two different planes : (1) in the stream of consciousness, (2) in the sub-conscious region of the mind.

It is unnecessary for the Jurist, to determine whether the sub-conscious mental facts and processes are states and processes of our bodily organism or of a spiritual thing different from the bodily organism.

The Human Mind, as we find it on our earth, ordinarily works as an organic part of the Human bodily organism, the Human Mind and the Human body here on earth being ordinarily parts of one organic unity, mutually acting and reacting upon each other.

Each individual Human Life, with its two aspects of the Human Body and the Human mind, has its life on our earth conditioned (1) by its physical environment and (2) by its social environment. The physical environment is taken here to include vegetable kingdom and animal kingdom (other than man).

To understand Human behaviour, reference should be made to four classes of causes :—

- (1) Mental causes (in conscious and sub-conscious human mind).
- (2) Bodily causes.
- (3) Social causes.
- (4) Physical causes.

Those who believe in the existence and influence on human behaviour, of minds other than the human mind and the animal mind, shall get a fifth class of causes to refer to.

To the Jurist, the Human mind is an organic unity of intellectual, affective and conative, habits, dispositions, capacities, conscious and sub-conscious states and processes, which are the conditions of such human Behaviour with which a Jurist is concerned. The term "Jurist" is here used, to include any one who deals in law in any way, and is affected by law in any way, in his capacity of relationship to law, so far such relationship enters his mental processes.

The Juristic psychology studies, primarily the life of the aforesaid organic unity of mental dispositions, mental habits, mental capacities, of conscious and sub-conscious states and processes, called the Human Mind; and secondarily studies (1) the life of the bodily organism (2) the life of the Human Society (3) the Physical Environment, so far these affect and influence the life of the aforesaid Human Mind.

§ 2. The Human behaviour which a Jurist has to consider is the behaviour of the following classes of persons :—

- (1) The Legislators
- (2) The Judges

- (3) The Litigants (the plaintiff, the defendant, the prosecutor, the accused criminal)
- (4) The Witnesses
- (5) The Lawyers
- (6) The ministerial agency of the Court
- (7) The ministerial agency of the Lawyers
- (8) The executive departments of the State in respect of their function as administrators of law and only in that capacity
- (9) (a) The General Public who are to obey the Law of the Jurist (b) The general Public as interested in the right administration of the right law.

Juristic psychology has to study the psychology of the minds of all these classes of persons.

The Law of the Jurist, issues out of the Human Mind, whether made by it or revealed to it, or discovered and interpreted by it; this Law is to be obeyed by the Human Mind; it is to be administered by the Human Mind whether as a judge or as a mere administrative executive officer. Litigations, civil or criminal, have their origin in Human Mind. The witness Mind is the great store-house of evidence.

The Human Mind is the Creator, the Preserver, the Administrator, the Follower and the Destroyer of the Law of the Jurist; this Law is an organic part and parcel of the life of the Human Mind.

Juristic psychology has to explain how the birth, growth, transformation, death of different laws, necessarily arise out of the constitution of the Human Mind, in the particular environment, social and physical; how the law's operation and the law's administration are determined by the constitution of the Human Mind in the particular environment social and physical, influencing the Human Mind.

The psychologist is not concerned with the ontological or metaphysical aspect of the Evolution of the Law. He need not answer whether the consciousness of Law in the Human Mind is only a participation in the Cosmic Universal Life—the Super-Life or the Super-Mind—of which the individuals are organic parts, somewhat like the individual cells of the Human Body in their relation to the whole Human Body.



SEC. 3.  
Different  
branches  
of Juristic  
psychology.

(a)  
General  
Juristic  
psychology.

§ 3. The General Juristic psychology deals with such portions of psychology, a knowledge of which should be acquired by each Jurist, for proper understanding of the special portions of Juristic psychology. The General Juristic psychology is a necessary prolegomena to the special Juristic psychology. In this introduction to Juristic psychology, we give, therefore, much space to General Juristic psychology.

(b)  
Psychology  
of Legisla-  
tion.

The psychology of Legislation considers (1) the psychology of the mind of the Legislator, (2) the psychology of the mind of the Public and of those who influence and are affected by the Legislation. The Legislator may be an individual (king or priest), or a king or priest aided by his Legislative advisors, or an oligarchical body; or a democratic body, or any body of men, secular or religious, or a Judge or Judges, or a lawyer or lawyers, or any compiler or framer of code. Legislation may be express and open, or may be in the form of interpretation, or may be in form of declaration of existing law—existing either in custom and common law or in sacred book or in any other form, or may be in form of expression of what is revealed.

The psychologist considers as processes of Legislation—all the various processes, express or implicit, open or stealthy, direct or indirect, real or fictitious, in real garb or in assumed masks, by which laws binding on Human behaviour, come to exist in Human Society. The psychological concept of Legislation is wider than the legal concept.

(c)  
Psychology  
of Law  
Courts

The psychology of Law Courts deals with the following :

1. Psychology of the Judge's mind.
2. Psychology of the witness-mind.
3. Psychology of the Litigant's mind.
4. Psychology of the mind of the Bar.
5. Psychology of the mind of the ministerial officers of the Bench and the Bar.
6. Psychology of the Public mind in relation to the behaviour of all the aforesaid minds.

(d)  
Psychology  
of unsound  
mind.

Psychology of the minds of the Insane and the Idiot, forms an important branch; a thorough knowledge of the same is valuable both to the Legislator and to the Judge.

Psychology of the criminal mind and of the growth and administration of criminal Law, may be called the criminal psychology. From a satisfactory knowledge of this psychology we shall get substantial help in determining the causes and the cure of all crimes. Proper knowledge of the causes and cure of crimes, will make the criminal law pure and just, and its administration truly civilised and efficient, and will secure efficient protection of the Society and the State from the criminals.

(e) The criminal psychology.

A study of the psychology of Legal consciousness and of various legal concepts, will enable one to grasp properly the inner life and spirit of existing laws, will save him from the servile bondage to the mere letter of the law which is a fruitful cause of injustice, and retards the healthy normal progress of law required for adaptation to the changing needs of the life of the Social organism.

(f) Psychology of legal consciousness and of various legal concepts.

The psychology of non-judicial administration of Law, includes the psychology of the Police, the psychology of the mind of Revenue officers, and the psychology of minds of persons affected by non-judicial administration of law.

(g) Psychology of non-judicial administration of Law

## CHAPTER II.

### LIFE AND MIND.

#### SEC. 1. Mind in Life.

§ 1. The capacity to adapt means for realisation of ends, is an attribute of Mind. Mind, considered in this sense, is inherent in all life.

This capacity to adapt means for realisation of ends, appears in unconscious vegetable life and in conscious animal life. In the conscious animal life, this mind appears in two forms: (1) Instinct (2) Intelligence.

#### SEC. 2. Vegetable Mind.

§ 2. (1) The plant adapts itself to sunshine and shade by giving out different sorts of leaves. The sun-leaves and the shade-leaves have structural differences. The sun-leaves perform their functions well in the sunlight, and the shade-leaves perform their functions well in the shade.

(2) In the plant-world, when bulbs are made to play the part of stems, and the stems the part of bulbs, the plants have been found to alter their respective structures to meet the new conditions.

(3) On removal of the leaflets from a leaf-stalk, the leaf stalk has been found to develop the characteristic features and functions of leaves.

(4) The heliotropic movements of the plants are behaviour of the plants to adjust relationship to the sun. The tendrils and shoots tend to move towards the light, and the roots move away from the light. In the root, growth is fastest on the light side and slowest on the shady side. The leaves set themselves in such a position that light falls on them on the upper surface and at right angles to the path of the strongest illumination. It has been found by experiments that in some plants, if light is allowed to fall on the undersurface by means of a mirror, the leaf turns right over. In some plants, leaves set themselves sideways in the path of the strongest illumination to protect the chlorophyll from the decomposing influence of light.



(5) When a germinating seed is placed with its root upwards and shoot downwards, the root goes downwards and the shoot upwards.

(6) The roots respond by bending in the direction of water.

Plant Life has been found to behave, react and learn by experience and to solve problems. The sensitiveness of plants to stimuli has been established. A condition akin to sleep has been found in *mimosa*.

Dr. J. C. Bose in the "Plant Response as a means of Physiological Investigation" says that there is hardly any phenomenon of irritability, observed in the case of animal tissues which is not also to be discovered in some simple form in the case of the plant; that with regard to plants, it may be said there is hardly a responsive physiological peculiarity in the highest animal that may not be found foreshadowed here.

Dr. J. R. Green in his "Manual of Botany" says :—

"That plants are sensitive to variations in the conditions surrounding them, and that *the responses they make to such variations are purposeful*, and conduce to the well-being of the organism, is abundantly evident". He says that it is noteworthy that an exceedingly small stimulus is able to bring about a very considerable effect, and that there is no direct ratio between the intensity of the stimulus and the resulting movement; that it can hardly be imagined that such slight disturbances can act mechanically upon the parts that move.

§ 3. (1) A boy may lose a fragment of a bone by an accident; but the bone may grow and the portion destroyed may be created anew by the activity of the living body.

SEC 3.  
Vegetable  
Mind in the  
Animal  
Body.

(2) The Human Body reacts differently from moment to moment, to keep its blood at that constant temperature which best suits the working of its brain. On the basis of changing requirements, it regulates the quantity of the heat produced and also the quantity of the heat given out.

(3) When food is not available from outside, the Human body distributes the available store of food in its own body, very wisely. The most important tissues are supplied with food, while the most unimportant tissues are starved. The most unimportant tissues die first, while the most important tissues die last. The Human Body thus controls food regulation very wisely during a starvation.

(4) The individual animal body, adapts its functions to the quantity of food, its constituents, the proportions of the constituents, within certain limits.

(5) The individual animal body by its individual reaction, secures capacities for resisting many disease poisons. The protective action of the individual body, is exerted on each occasion of invasion by disease germs. Warm-blooded Vertebrate animals produce anti-toxins against the toxins of many bacteria, protozoa, plants and snakes.

An attack of small-pox, vaccination, inoculation by dead typhoid bacilli, are stimuli for exertion of defensive activity of the Human Body ; the defensive contrivance thus secured, comes to use in future during another attack of small-pox or an attack of typhoid. In Immunity, the individual organism adapts itself to a specific invasion, and by a specific reaction meets a specific invasion ; it also provides against future recurrence. It thus acts like an intelligent, prudent and provident person.

(6) Reproduction or the power to create its own initial form of existence, is a wonderful creative power, in which the individual organism plays the roll of a creator.

SEC. 4  
Mind in the  
development  
of organic  
life

§ 4. From a single cell, by a series of cell divisions, an organism grows, which is a society with a government. This organism may be a Shakespeare, a Buddha or a Newton. The cell division is controlled by an end or a purpose, which rules, controls the entire process of cell-division. This organism mind is as much a reality as electricity is a reality. The growing developing organism creates organs and tissues which did not exist before. This production of new things in development is a feature not explainable by physical and chemical laws and may be, therefore, referred to a new form of energy—organism-mind.

SEC. 5.  
Instinct and  
Intelligence.

§ 5. Instinct and Intelligence are two different forms of mind-activity. They are primary attributes of mind ; one did not grow from the other. Taking instinct in a wider sense, the conative impulse to all activities of intellection, may be referred to an instinct of Intellection. In a narrow sense, Instincts may be confined to Instincts other than whatever instincts may be at the basis of intellection and of æsthetic, ethical and religious life, so far the latter's activities are in mind springing from innate mental constitution. There are innate conative tendencies

at basis of our ways and forms of thinking, at basis of our æsthetic and ethical judgments. The subjective thought-activity adapted to obtaining correct knowledge of objective world of reality, whether pragmatic or otherwise, is also a case of adaptation of means to end. In Insects like ants, bees, wasps, the special automatic activity of Instinct reaches the highest development. Intelligence has developed according to the development of the cerebrum of the vertebrates. In Man, plastic intelligent activity reaches the highest limit. Man has many instincts though in a modified form.

A true instinct is inborn and is independent of experience, though it may require necessary objective stimulus for its manifestation. Instinct can not learn, and it fails to adapt itself according to changing circumstances. Intelligence comes to help where Instinct fails ; Intelligence adapts means to end on the basis of experience and according to the teaching of experience.

*Acquired Automatism is not Instinct.* On the basis of experience, Man through his Intelligence, by trial and repetition, develops habits of performing complex motor activities in response to certain stimuli and requirements—a power to do without attending, without conscious willing. Every individual is born with *an inborn capacity* to acquire these automatic habits which are learnt by the individual. These acquired automatic habits (such as are shown in writing, speaking, walking, cycling &c.,) become a second nature ; conscious attention may affect the efficiency of the working of this machinery.

Both Instinct and Intelligence are found in all animals ; the difference is in their relative distribution and in the nature of the operation of the Instinct.

In Instinct, the adaptation of means to end, takes place without the help of the experience of the Individual. In the fully-developed Instincts of Insects, highly complex co-ordinated motor activities adapted to performance of ends, take place ; *in man instincts operate as conative impulses ; intelligence comes to their help and through experience adapts means for realisation of the ends of the instincts.* In Insects, the instincts control means and end ; in man instincts control ends.

Man has vegetative life, instinctive life and intelligent life in one organic unity. The three forms are alike primary and primitive.



The instinctive bee is not entirely without intelligent adaptability.

Instincts, though innate and not acquired by individuals, may manifest themselves in different stages of the individual life and may require a certain environment for manifestation.

SEC. 6.  
Operation  
of Instinct  
and Reason  
in Man.

§ 6. What is an Instinct in the active conative side, is an emotion in the feeling or affective side. Man is a bundle of Instincts which affect him as so many impulses. Impulses similar to the impulses which evolve and maintain the vital activities in the plant-world,—in conscious man, work as instincts. In the consciousness of the objective world of experience, the impressions that come through the senses, come from outside individual human consciousness. In the consciousness of our active life, instincts emerge as from outside the conscious stream, though they emerge from our subconscious life. Moral Life is the proper regulation of the Instincts, an instinct being dynamically controlled with the help of another Instinct. The real motive forces of Human activity are to be found in Instincts Emotions; in reflective consciousness through help of memory; they appear as ends or objects of pursuit in various garbs.

The nature of man, as made by the adjustment of the various instincts, with the help of Mind's regulating standard and activity, gives man the Ideal to which he pays homage, and also gives him the life which he actually lives. Man is guided by his Instincts. The interests of the different Instincts are in many cases of a conflicting nature.

Intelligence or Reason, in its speculative side, reads records, interprets, experience; and tells us the proper means for realisation of any Instinct, or any Ideal, or the ideal of individual good, or the ideal of a wider common good. Intelligence or Reason stores and supplies, the result of experience of the indulgence of different instincts.

In the present condition of the human race, we find the human intelligence working according to certain innate forms or categories. The tendencies of mind to think in these particular forms, may be called intellectual instincts.

Instincts are the prime movers of all human activity. Take them away and all human activity would cease. An instinct or instincts, may energise as an impulse springing from the dark of our Subconscious Personality, or may remain



masked (1) in an willed activity ; (2) or in the living vitality of an Ideal or End which the self accepts and follows ( the Ideal being either the Instinct or Instincts represented in reflective consciousness by some name given or a means for satisfaction of the instinct or the instincts ) ; (3) or in a derivative habit which is a means for satisfaction of the instinct or instincts and which came to exist for their satisfaction ; (4) or in an idea or a system of ideas.

All mental activities exist through the driving power of  $\frac{\text{Instinct}}{\text{Emotion}}$ . An  $\frac{\text{Instinct}}{\text{Emotion}}$  is accompanied with controlling selective power in calling up ideas which satisfy it and suggest means for its satisfaction. But though intellection is contrasted with instincts, intellection looked at from its conative aspect, is itself an instinct or a system of instincts. The other instincts rouse this instinct of intellection, which selects occasion for activity and occasion for sleep, and supplies light and necessary knowledge to the other instincts according to requirements. All these are aspects of the same living unity—the mind. The search for pure speculative Truth, is the hidden ideal of pure instinct of reason ; when this operates not for another instinct but in its own interest, it is the impulse to get pure truth.

§ 7. The human minds on this earth, are chained in organisms called the human bodies. The study of the living human body belongs to the science of Biology ; from the Biological standpoint, the human mind is a function of the human body—a teleological contrivance for securing the healthy existence of the human body and for securing continuation of the species.

SEC. 7.  
The Human  
Mind from  
the Biologi-  
cal stand-  
point.

The Biological special view of the human mind treating mind not as an end in itself but as a means, a mere instrument (1) for securing the healthy existence of the human body and (2) for securing continuance of the species, is of high practical value in affairs of every day life where the problems of food and sex are the most important practical problems. It should be remembered, that the empirical human mind, and the human body of the materialist, are alike concepts of the human mind, carved out of and abstracted from the Absolute Reality ; that the unifying principle or principles which make them objectively real can not be had in the world of appearances of external and internal preceptions though felt through them.

SEC. 8.  
The theory  
of motives  
of Psycho-  
logical  
Hedonism  
is false.

§ 8. From what have been said, it is clear that the theory that the only rulers of human conduct are pleasure and pain, is false. Human Mind is a growth out of vegetable life and animal life. Human Mind is endowed with a number of evolved and evolving impulses to action (conative impulses), of which the impulse to choose that which gives pleasure or frees from pain, and the impulse to avoid what gives pain, are only two. Animals have martyrs. An animal mother may prefer suffering rather than desert the young. The solitary wasp stores food for her offspring which she never sees. The blind impulses unconsciously work in the vegetable kingdom and evolve and maintain the various types of vegetable life. These impulses work in the making of the animal body. In animal mind, there are impulses working blindly as instincts in which the final purpose is not in animal consciousness. In the mind of man, the springs of all action are primarily to be sought in the impulses planted in the mind. Through human experience and the higher powers of man, and owing to the complexities of social life, their external manifestations take divergent forms and shapes. The ends we consciously pursue draw their vitality from the impulses. An end is either the object of an impulse or the means for satisfaction of an impulse.

Instinctive action involves (1) complex mode of behaviour adapted to an end without previous experience of the situation (2) constant following of the mode by a species. Instinct is innate, more or less specialised conative disposition, plus more or less specialised cognitive disposition. The innate cognitive disposition of instinct in the animal world may undergo change through experience. The innate conative disposition to react may be transferred to objects to which there was no reaction in the beginning. The bodily movements of the conative side of an instinct may undergo change.

All animal behaviour is either purely instinctive or intelligent, in which the instinct has undergone change in the light of experience for the realisation of the end or purpose of the Instinct. In Man, experience plays a large roll in dictating how the end of an Instinct or Impulse is to be realised. The original springs of action are from the impulses which emerge from the subconscious mind; Intelligence utilises experience to say how the ends of these impulses can be best realised.



In insects, the instincts are very complex and highly specialised, and in which the modifications of the instincts are relatively little. In the higher vertebrate animals, the instincts are of a low degree of specialization and they become specialized by experience.

*In Man, we have the instincts in a very general wide form.* The necessary reactions for satisfaction are required to be organized through experience and education. Intelligence secures this through experience; every child learns the result of racial experience, stored in tradition (in its widest sense) social life and social mind, through education, conscious and subconscious. The human child can not protect itself by help of the *general vague behaviour instincts planted in man* and requires protection during the period of growth and training. Parental Instinct planted by Nature secures this.

Experiences of pleasure on satisfaction of instincts and of pain on nonsatisfaction, arouse impulses; these impulses get mixed up with the primitive instincts. After satisfaction of each instinct, it acquires a derivative hedonistic value; this psychological fact led to the theory that human conduct is controlled by pleasure and pain alone.

*The general character of the Human Behaviour Instincts render them not easily recognisable.* They come into operation in different stages of life, in presence of proper external stimuli. Instincts are modified in man through operation of the needs of society and memories of pleasure and pain, and through operation of the various ideals accepted for practical guidance.

The human behaviour instincts may vary in strength in different individuals within very wide limits; an instinct or instincts may not at all appear in an individual or individuals owing to difference in the innate mental constitution or owing to absence of proper evoking environmental circumstance. Cosmic Instincts like thirst for the greatest good of the whole sentient universe, thirst for Pure truth at any cost, are strongly operative only in the select few among large masses; and there are many in whom they do not stir at all.

§9. Mind evolves like the evolution of a single cell to a fully-developed organism. It proceeds more from general to particular in actual *spontaneous growth*; and the reverse process is used in after life in reflective deliberate thinking and not so

SEC. 9.  
Evolution of  
the Individual Mind.

much in spontaneous natural development. The progressive evolution is controlled and affected (1) by the language which contains a ready made storehouse of *traditional concepts*; (2) by the beliefs, concepts of those around (3) by the practical requirements of the organism. The individual mind perceives similarity in difference and goes on exercising its activity in differentiation and assimilation according to intrinsic similarities and dissimilarities in experience; but this individual activity is controlled by three factors; (1) Tradition conveyed through Language and forms of thinking embodied in language (2) Ideas of persons around (3) requirements of practical life.

SEC. 10.  
Conservation and progress.

§ 10. The conservative impulse and the impulse to change operate in life and mind. One is statical, preserving what is; the other is dynamical, leading to a different state of existence.

The Law of Habit.

*The Law of Habit* which is implied in *the principle of contiguous association*, is the great law of conservation in the Human mind.

The Law of Transference from Similar to Similar.

*The Law of Transference* from similar to similar in intellection, feeling, conation, is a great law of progress in the Human Mind, the operation of the law remaining confined within the one and the same mind. But this progress may be towards Truth or untruth.

The Law of Like Response and the law of Suggestion.

*The Laws of Like Response and suggestion* are great laws of progress, operating in action of one Human Mind upon another Human Mind and in influence of mental products upon other Human minds. They are the laws of social interaction; they are the laws through whose help all the social acquisitions in thinking, feeling and acting become individual acquisitions; they are the laws of assimilation of the individual by the Society; they are the laws through operation of which the social organism makes the new born individuals, part and parcel, of its organic life. In Education there is conscious deliberate purposive application of this law of like response. and the law of suggestion.

The Law of Reproduction through Similarity.

*The Law of reproduction through similarity* depends upon the living activity which supplies similars to consciousness, from the storehouse of memory; upon these materials, the Law of Transference works.

*The law of differentiation and assimilation* is a law of progress of the Human Mind. *Every law means only a*



*uniformity in the processes ; the unifying activity for preserving the uniformity springs from the Living Human Mind.* The actual results worked out by the laws of progress in each individual human mind depends upon its individual capacity and the nature of environmental influences (social and physical) that play on him. The individual capacity includes the individual impulse to attain a certain standard of development.

§ 11. Many persons feel an ebb and flow in their mental life during the course of a day ; an individual may have a period when his mental powers work best and a period when his mental powers work very dull. This ebb and flow in mental capacity may take place not only within the course of a day but differences may take place on different days. A Judge should have the portion of work which requires the highest and deepest mental exertion for the time when he is at his best. A witness if on the witness-box during ebb of mental life, may depose incorrectly in spite of his honesty. Observation during an ebb of life runs greater risk of error than one during flow of Life.

SEC. 11.  
Ebb and  
Flow in  
Mental Life.

The differences in mental capacities on occasions of ebb and flow, may be of various degrees in different individuals ; and there occur cases in whom while there may be mental capacity of a genius during a high-flood of mental life, the ebb sinks below the average.

## CHAPTER III.

### METHODS AND DIFFICULTIES OF PSYCHOLOGICAL STUDY

SEC. I.  
Methods of  
acquiring  
materials.

§ I. (A) *Observation*: Observation of personal mind is made by introspection and retrospection ; other minds are read by inferences.

(1) *Direct observation by Personal introspection and retrospection*: We observe the states and processes of the mind as they go on within us at the moment of their occurrences or we observe them by recollecting them through our memory. Nature is dynamical—always in motion ; when we think, we take them as statical. Every present state of mind *ceases* to be present at the very moment. All introspection involves both introspection and retrospection. All Internal perception involves introspection, retrospection, and operation of thought concepts just as all external perception involves present experience, recollected experience and operation of thought concepts.

(2) *Inferential observation of other minds*: Reports of the results of introspection and retrospection by others, give us their personal observation. Observation through reports, is a process of inferential and indirect observation. Inference about the mental states and processes of other minds by observing their other external manifestations, is also a process of indirect observation. The External manifestations may be made in the following ways :—

- (a) The Expressions of the emotions and feelings.
- (b) Language, from primitive sign language to advanced types of languages and manufacured systems of conveying ideas.
- (c) Manners, customs, etiquette, rules of morality as shown in conduct.
- (d) Religious rites and institutions.
- (e) Political and Legal rights as shown in conduct ; Political institutions.
- (f) Social institutions.

- (g) Behaviour of individuals and groups.
- (h) Architecture, Sculpture, Painting, Literature, Manufactures.
- (i) All Sorts of human products.
- (j) Organic states and processes accompanying mental states and processes.

(B.) *Experiment* : Individual capacities such as perception, memory &c., may be tested by experiment.

Prof. Munsterberg says :—"The courts will have to learn sooner or later, that the individual differences of men can be tested to-day by the methods of experimental psychology far beyond anything which commonsense and social experience suggest."

Experiments have proved very useful in psycho-physical researches, and also in the purely objective study of physiological psychology, in the determination as to what processes in the organism are directly connected with what mental states and processes. Capacities to execute definite tasks can be experimentally determined.

In the Puyenbroeck's case mentioned by J. H. Wigmore in "the Principles of Judicial Proof," the psychologists saved a man from gallows. The following extract relating to this case taken from the aforesaid book, shows the nature of the experimental evidence offered on the occasion :—

"It remains to cite briefly some of the experimental evidence offered on this occasion. Eighteen seven year old pupils were asked the colour of the beard of one of the teachers in their building : 16 answered black ; 2 did not answer ; the man has no beard.

Of 20 eight year old pupils who replied to a similar query, 19 reported a colour ; only one said the man had no beard (which was correct). Similar results were obtained from older pupils. In one class, a pupil laughed aloud at the query and exclaimed : "He hasn't any beard." Nevertheless 12 of the 22 reported a definite colour.

Again, a teacher of a certain class visited another class, stood before them for 5 minutes, talking and gesticulating but keeping his hat on. Directly after he left, the teacher of the class obtained, in response to the query : "In which hand did Mr.—hold his hat ?" 17 answers of "right", 7 of "left" and only 3



correct answers. Other experiments showed that suggestions of odour and temperature could be easily evoked in school children. Finally to duplicate the strongly suggestive questions of the magistrate, another experiment was tried with 8-year old pupils, who gave written answers to the following: "When you were standing in line in the yard, a man came up to me, didn't he? you surely know who it was? Write his name on your paper." Though no one had approached the teacher, 7 of the 22 pupils gave a man's name. The experimenter then continued the test by saying: "Was it not Mr. M.—?" to which 17 pupils now answered "Yes". Before a number of lawyers, individual pupils were then subjected to oral examination and gave complete descriptions of the man's dress and personal appearance."

## SEC. 2. Analysis.

§ 2. Subjective analysis is an ideal process of abstraction by discrimination made by attention. In adult life all the mental states and processes are more or less compound, the compound consciousness differing in quality from the elements that entered into composition. The compound consciousness is the result neither of mere *mechanical combination* nor of mere *chemical combination* but one of living growth to a thing which to consciousness appears as different from the original elements out of which it grew. Consciousness is a continuous flow and can not be divided into distinct states without altering its character. The elements found by analysis, are ideal abstractions. The limits of subjective analysis are fixed partly by the original structure of our organism and partly by association and habit. Disintegration of disease gives us information of mental laws of which a mere study of normal mind gives no knowledge.

The Empirical psychologists follow a method of objective analysis. They try to get back to rudimentary mental experiences by objective observation, especially of simpler grades of mental life in children and uncivilised races. These ultimate psychical elements are more or less hypothetical in character. What the simplest sensations, entering into the most rudimentary forms of consciousness are really like, it is impossible for us ever to say. In seeking to get back to psychical elements we have to carry out a process of ideal construction analogous to that which the physicist carries out in constructing his material atoms. They invent a kind of hypothetical fiction as a necessary presupposition of the *knowable* psychical phenomena. The Empiricists'



objective analysis is not a simple process like subjective analysis but involves complete inductive processes for the discovery of truths by means of hypotheses.

§ 3. Analysis prepares the way for classification of psychical phenomena, according to their similarities and dissimilarities. SEC. 3.  
Classifica-  
tion.

In psychological classification, we resort to the logical artifice of abstraction by singling out for special consideration some particular factor or aspect of a concrete mental state. A concrete state is brought under that aspect which it manifests to the greatest extent. Concrete mental states as complete mental operations do not exist.

§ 4. Discovery of laws, causes, conditions of mental phenomena often takes place through the help of hypothesis. Whether the hypothesis is correct or not, is to be determined by the methods of verifying a hypothesis. SEC. 4.  
Hypothesis.

§ 5. Induction is used in finding out general laws. The law that all psychical processes have corresponding nervous processes is proved by the method of Induction by simple enumeration. The Law of Relativity is established by agreement and in a remarkable manner by concomitant variations. SEC. 5.  
Induction.

§ 6. Deduction is used in explaining complex laws or complex individual mental phenomena by help of simple general laws. SEC. 6.  
Deduction.

§ 7. The following show the difficulties of psychological study: SEC. 7.  
Difficulties  
of psycholo-  
gical study.

(1) We can not always put ourselves into the cool and scrutinising attitude desirable in subjective introspection.

(2) In subsequent retrospection, one may fail to recollect the entire mental condition with all its aspects and features.

(3) In personal introspection or retrospection, one stands absolutely alone. There is no one to see the same and help him in verification.

(4) The results of self-inspection can never be quantitatively exact.

(5) Absence of a safe language to convey the psychological experiences of one's subjective introspection and retrospection to another mind.

The use of analogies and figurative expressions is inevitable in psychology. Each self sees his own mind only directly.

Other persons can read his mind only by inference. The knowledge of the external phenomenal world of space and time through our senses of eyes, ears, smell, taste, touch and muscular feeling, is common objective experience of which, a number of persons can have direct knowledge at the same time. In knowledge of the external world of outward sense-perception, a number of persons can know the one and the same thing at the same time.

The ordinary mind in many cases has a strong tendency to think the extended percept of space as the type of Reality and to regard that any reduction of any thing else to extended percepts in space and their relations as good and satisfactory explanation.

Identity of common experience in knowledge of the external world of sense-perception and the very powerful dominating and engrossing sway of this Perceptual knowledge over human mind in the present stage of its evolution, make pictures, images, concepts, relations known in the world of External perception, the most readily available means of communicating and explaining the inner introspective and retrospective experience of one mind to another mind. But the experiences of our mental life are unique and of a quite different kind from the experiences of the world of external perception. The mental facts and the relations among mental facts require to be seen or felt directly by each mind ; their real nature can never be expressed by language used in knowledge of External Perception or by language which has evolved in the course of our communication and thinking about the world of external perception.

The great difficulty is that I can not show directly my mental experiences to another mind. They can be expressed in various ways by language borrowed from language of the world of External Perception, and only *a kindred sympathetic spirit energising and vibrating in harmony* can grasp correctly a psychical experience of another expressed in language borrowed from the world of matter.

Two persons agreeing relating to the solution of a mental problem, may think themselves as differing and may quarrel, only because the language used by one does not mean the same thing to both of them. In the world of external perception,

meanings of terms can be rendered definite by reference to the objects themselves or their pictures ; but no such thing can be effected relating to the language of subjective mental facts and subjective experiences.

(6) Conscious states are not fixed enduring things. You can think of them and examine them afterwards by recollecting them through memory but memory may not be faithful in reporting about the lost mental experience.

(7) Consciousness is a perpetual flux, a continuous motion. In thinking of it, we take parts or aspects of the same as fixed and stationary like the successive cinematographic pictures which running together produce the effect of a moving scene. This Static method of thinking of an ever-moving reality may mislead.

(8) Every personal stream of consciousness is a moving reality. In the reflective thought of psychology, we deal with their parts obtained by analytical abstraction and ideal synthesis. One may be mislead to deal with these abstractions as separate individual entities.

(9.) Consciousness is not always a continuous stream ; in the eye of retrospection, the state of wakefulness seems like a continuous stream of consciousness. But the volume and depth of this stream vary considerably, from what is almost unconsciousness to great intensity of consciousness. Even in wakefulness, in normal man, breaches or lapses into unconsciousness happen which are too short to be noticed by retrospection ; these breaches are ideally filled by consciousness during retrospection. The conscious mind and the subconscious mind move as one unity ; consciousness is only an aspect ; for its full meaning, the subconscious mind should be tapped. Consciousness is the heaving, surging, foaming, visible, illuminated, surface of the mind ; it always rests upon a subconscious life, as the surface of the sea rests over the deeper waters.



## CHAPTER IV.

### CONSCIOUSNESS

#### SEC. 1. Conscious- ness.

§ 1. The mental processes become *conscious* mental processes in the animal mind and in the human mind.

Mind has always a sort of *awareness* by which, means are adjusted to ends in the vegetable kingdom. But this "awareness" is different from what is *consciousness* in man. "Awareness" is an inferential fact from the actions that flow ; but consciousness is "*illuminated awareness*" felt by the individual animal directly and immediately as constituting its ownself. Simple awareness of the vegetable mind may be called dark unilluminated consciousness. But apart from the conscious awareness of the human mind, there is a sub-conscious awareness which is wider than conscious awareness, and upon which conscious awareness rests. This sub-consciousness has control over the wakefulness and sleep of man. A man is deep asleep ; loud noises from which no danger can be expected, will not bring wakefulness ; but if an uncommon strange noise happens from which danger may arise, and which requires further examination, the sub-conscious awareness will change the state of sleep to one of wakefulness. In our ordinary wakeful condition, this *subconscious awareness* plays a strong part in regulating our attention and in thus controlling the ebb and flow of the degree of consciousness. Upon the efficiency and superiority of this sub-conscious awareness, depends to a great extent the efficient timely adaptation of the individual mind to the environment.

#### SEC. 2. Cognition, conation, feeling.

§ 2. Cognition, conation and feeling are the three aspects found in all consciousness ; according to the predominance of an aspect, a state of consciousness is called cognition or conation or feeling. Each aspect is separated by an act of abstraction by reflective thought.

In perception, recollection, recognition, reasoning, we are predominantly cognitive.



In desiring, choosing, resolving, attending, acting, deciding, the active volitional element is predominant. In feeling, the passive affective element is predominant.

§ 3. The following show the nature of consciousness :—

SEC. 3.  
The characteristics of consciousness.

(1) The consciousness is personal consciousness, every state of consciousness being the sole exclusive property of one personality which can not belong to other personalities.

(2) Consciousness is in a state of continuous change ; it is restless motion. No particular state of consciousness can be exactly identical with a future state of consciousness ; the future can never become past. The life-history of the mind having a certain mental state at one time will be always different from the life-history when a similar mental state happens in future. No bit of consciousness in the living stream can be exactly identical to another bit in a different part of the same stream of consciousness. Continuity lasts so long consciousness lasts ; after temporary unconsciousness of sleep or of some other kind, the subsequent consciousness is felt as a continuation of the previous consciousness save in cases where a person's consciousness becomes split up into more than one stream (as in double consciousness).

Consciousness is not really always a continuum though it seems to be so. It is made of a closely following series of flashes of consciousness, which running together make a continuum, and also sometimes seem as a continuum, though not really so. Consciousness can not exist without change. Consciousness always involves attention in the widest sense. The tendency of attention is to fix and is thus against change. Consciousness is an organic unity of change and fixation ; the process of change may take place by variation in the degree of attention or by absence of attention. Consciousness exists through continuous fluctuations in the degree of attention. The breaks of no-consciousness in our moments of wakefulness are so short and of lightning speed that memory can not detect them ; thus the consciousness seems a continuum.

(3) Consciousness flows like a continuous stream ; while it flows, the self sees its way in thought, feeling and action by momentary flashes of vision which appear in every moment ; these flashes of vision constitute the vision of cognition. These what seem as intuitive visions from moment to moment imply

processes of sub-conscious revival of past experience and sub-conscious inferences. When we do the introspection and retrospection of reflection and gather up the result, we do it by making the dynamical flow of consciousness as statical in our memories of them.

In this statical memory of the dynamical stream of consciousness, the images of the sensory percepts in that stream can be clearly brought to memory as stable images, whereas *our relational consciousness which* gave the cognitive vision can not be imaged but can be expressed in language by unfolding its whole meaning. Sometimes one is not even able to give the whole meaning of a particular relational consciousness of him. Sometimes an acute philosopher is required to unfold explicitly the full meaning and significance of a certain bit of relational consciousness. *The capacity to move through a form of relational consciousness along the stream of consciousness, does not always give a capacity to state in explicit language the full meaning and implications of that relational consciousness.* A person may actually judge correctly or act correctly in real life but he may fail to give in explicit express language, the reasons which determined his judgment or his action; for this would require a capacity to bring to reflective consciousness, all the elements which worked together in his sub-conscious mind and directed his judgment or his action.

(4) According to Professor James, the *pace* of the stream of consciousness is not the same in all parts. "Like a bird's life, it seems to be an alternation of flights and perchings." "The resting-places are usually occupied by sensorial imaginations of some sort, whose peculiarity is that they can be held before the mind for an indefinite time and contemplated without changing; the places of flight are filled with thoughts of relations, static or dynamic."

Professor James says: - "Now it is very difficult introspectively to see the transitive parts for what they really are." "The rush of the thought is so headlong that it almost always brings us up at the conclusion before we can *arrest it* or if our purpose is nimble enough and we do *arrest it*, it ceases forthwith to be itself. As a snowflake crystal caught in the warm hand is no longer a crystal but a drop, so, instead of catching the feeling of relation moving to its term, we find we have

caught some substantive thing, usually the last word we were pronouncing, statically taken, and with its function, tendency and particular meaning in the sentence quite evaporated. The attempt at introspective analysis in these cases is in fact like seizing a spinning top to catch its motion, or trying to turn up the gas quickly enough to see how the darkness looks. And the challenge to produce these transitive states of consciousness which is sure to be thrown by doubting psychologists at any one who contends for their existence, is as unfair as *zeno's* treatment of the advocates of motion, when asking them to point out in what place an arrow *is* when it moves, he argues the falsity of their thesis from their inability to make to so preposterous a question an immediate reply." "There is not a conjunction or a preposition and hardly an adverbial phrase, syntactic form or inflection of voice, in human speech, that does not express some shading or other of relation which we at some moment actually feel to exist between the larger objects of our thought. If we speak objectively, it is the real relations that appear revealed; if we speak subjectively, it is the stream of consciousness that watches each of them by an *inward* colouring of its own. In either case *the relations are numberless and no existing language is capable of doing justice to all their shades.*" "Every definite image in the mind is steeped and dyed in the *free water* that flows round it. With it goes the sense of its relations, near and remote, the dying echo of whence it came to us, the *dawning* sense of whether it is to lead. The significance, the value, of the image, is all in this halo or penumbra that surrounds and escorts it or rather that is fused into one with it and has become bone of its bone and flesh of its flesh." "Let us call the consciousness of this halo of relations around the image by the name of "psychic overtone" or "fringe" "We see, then, that it makes little or no difference in what sort of mind-stuff, in what quality of imagery our thinking goes on. The only images intrinsically important are the halting-places the substantive conclusions, provisional or final, of the thought. Throughout all the rest of the stream, the feelings of relation are everywhere and the terms related almost naught. These feelings of relation, these psychic overtones, halos, suffusions or fringes about the terms may be the same in very different systems of imagery."



Conscious-  
ness is mc-  
tor.

(5) Every state of consciousness tends to issue out in some form of action. Professor James says :—"using sweeping terms and ignoring exceptions, we might say that every possible feeling produces a movement and that the movement is a movement of the entire organism and of each and of all its parts." Any change in the brain-centre, affects the human body every where. The most insignificant sensory stimuli may affect respiration, heartbeats, the arterial pressure, the pupil, the bladder, the sweatglands, the bowels, uterus, voluntary muscles. "Every impression which impinges upon the incoming nerves produces some discharge down the outgoing ones whether we be aware of it or not." One reaction may be inhibited by another reaction.

Conscious  
ness and  
attention.

(6) The activity of attention acts like light reflected from the concave mirror of a dark lantern in a very dark night. Of the whole range of mental states and processes, the area illuminated by the light of attention is the conscious area. This light is very strong at the focus and gradually wanes towards the fringe till darkness sets in. The strongly illuminated area may be identified with the area of attention.

Attention may be used in two senses: (1) in a wide sense as the psychical activity covering the whole area of consciousness, (2) in a narrow sense as the psychical activity confined to a part only of the whole conscious field—the strongly illuminated portion.

In the wider sense of attention, consciousness always involves the activity of attention.

When we pass into sleep, the attention is gradually withdrawn; and as activity of attention diminishes gradually, the light of consciousness wanes gradually, till we pass into the unconsciousness or darkness of sleep. In sleep, there is no attention. Anything that produces a monotonous effect and tires the attention so that it spontaneously ceases to be active brings sleep.

An impression may reach an external sense but if not attended to, it does not enter consciousness. One may remain present at a place; but of all things present there, only those which are attended to enter his consciousness; of words spoken only such as are attended to enter one's consciousness. In hypnotism and somnambulism, attention is kept bound down

within certain definite limits ; outside these definite limits, there is sleep and nothing can enter the consciousness. To chain a man's consciousness, it is necessary to chain down his attention. This attention may be chained down more or less by an idea, a feeling or an emotion, a belief, an impulse, a bias coming from within the mind, or may be chained down by external influence.

The genuine *Sutee* and the *martyr* having had their attention chained to their visions, the physical pain could not enter their consciousness being unattended to.

The soldier in the excitement of battle may remain unconscious of a physical wound inflicted on him. Painless surgical operations under hypnotic suggestions are effected by diversion of attention. There are states of consciousness in which attention is so diffused as to approach almost annihilation.

Attention in the narrow sense is the mental activity confined to the strongly-illuminated portion of our consciousness ; this mental activity can not maintain itself in monotony. Monotony is its poison ; constant change is its life-fluid, its nectar. Even when this attention hovers on the same subject, it maintains itself by looking at the subject from various aspects and by dwelling upon its divergent associations and relations *i.e.*, by maintaining a life of change. The strong mental activity of this narrow focussing attention can not be continuously maintained ; the mind throws the light of this focussing attention by a continuous series of flashes ; what seems as continuous attention (in the narrow sense) is only a series of closely-following separate acts of attention. As a light quickly moved in a circle seems like a circle of light, similarly close succession of flashes of attention, seems like continuous attention. What seems as a continuous stream of consciousness is also a very close succession of flashes of consciousness of every degree, all running together and giving rise to what is a continuum and what sometimes seems a continuum.

(7) Thought activity always remains in consciousness ; it gives the meaning, significance.

(8) Consciousness involves a subject conscious of an object.

(9) Consciousness and attention in the wider sense, being co-extensive, and attention being a necessary attribute of consciousness, the function of consciousness is always selective, selection being along the selection of attention. Consciousness moves along what interests it; this interest is an aspect of the mental state of which attention is an aspect. The selective work is performed by the subconscious mind as well as by the conscious mind; selection and rejection are sometimes conscious acts; sometimes we get only the result in consciousness, selection and rejection having been done in the subconscious sphere. In the presence of the objective world of experience, impressions may pour in through all our senses but only those impressions enter our conscious field, which are selected out by attention. Different persons may have divergent conscious experience in the presence of the same incidents according to the selective activities of their respective attentions and may thus during their depositions give divergent accounts of the same incidents. After hearing the same evidence, different judges may be differently impressed, as the same evidence might not have entered equally their consciousness owing to divergent directions of the selective activities of their respective attentions.

(10) Consciousness implies change in the states of consciousness; without change in time, there can not be any consciousness. Consciousness is, thus, dynamic. Consciousness is like the heaving, undulating, rolling surface of the deep. The motion is essential for its life. The illumination of consciousness exists only in an uneven surface.

SEC. 4  
Conscious-  
ness and  
Human  
Mind.

§ 4. (1) Human Mind is the subject which has certain states and performs certain activities.

(2) Human mind energises in two planes: (a) in what seems a stream of consciousness (b) and as subconscious mind.

(3) In reflective consciousness, it is conscious of itself as the subject of thought-processes and as an active personality.



## CHAPTER V.

### THE SUBCONSCIOUS MIND.

§ 1. Those who regard Mind and Consciousness to be co-extensive and identical, will laugh at the expression "Sub-conscious Mind;" they will say that this expression is similar to such an expression as "Golden Stone Cup."

SEC. 1.  
Subcon-  
scious Mind

To laugh at the theory of Subconscious mental activity on the ground that a form of activity which is not conscious can not be mental is based on the limitation of the meaning of mind to consciousness alone. We have no electric sense. We believe in the existence of electricity by its effects which affect our existing senses. Similarly activity which is essentially of the nature of conscious mental activity when known by its effects upon the stream of consciousness, should be called subconscious mental activity—the other characteristics of conscious mental activity except consciousness being present in the case.

We do not regard Mind and Consciousness to be co-extensive. When we are wide awake, we say that we are conscious; in the passage from consciousness to sleep or from sleep to consciousness, we say that we are partially conscious; in dreamless sleep, we say that we are non-conscious. This sort of consciousness is what we ordinarily understand by consciousness. But there are mental activities in which mind finds out means for realisation of an end or purpose, and adapts, arranges and works out means and processes for the carrying out of the end or purpose, without having that condition of mind just described as consciousness, but showing intelligence and foresight shown by highest sort of activity of consciousness. In this realm of sub-conscious mental activity, mind must be said as having "awareness" while energising, though this sort of "awareness" is quite different from what we ordinarily mean by "consciousness." The sub-conscious processes of the mind are inferred from the conscious processes of mind, just as by seeing the floating top of an iceberg over the water we infer that a portion

of it is under water. Sub-conscious processes of mind are inferred also from behaviour.

Mental activity of a certain form enter the vision of consciousness and can be made the subject-matter of conscious thought. We are conscious of light only between the definite limits of frequency of vibrations of light waves from about 400 to 800 millions of millions per second. The visible spectrum forms only a small part of the whole spectrum. Ultra-violet and Infra-red rays can not be seen with our eyes. Consciousness is like the visible portion of the spectrum. The eye of consciousness is not conscious of the whole of our mental activity.

In speaking of a sub-conscious mind we do not commit ourselves here to any metaphysical theory. One hypothesis is that subconscious mind is the nervous system, the subconscious mental activity being unconscious cerebration. Another hypothesis may be that subconscious mental activities are activities of consciousness of very low strength diminishing to infinity and ordinarily incapable of distinct clear separate recollection in the ordinary consciousness of normal intensity. Subconscious mental activity may be again activity of mind of which consciousness is an occasional attribute--mind which is not brain. One theory may be that some of what are called subconscious states are conscious states dissociated from the main stream of consciousness.

SEC. 2.  
History of  
evolution  
of the Hu-  
man Mind  
on this earth  
is consistent  
with exis-  
tence of sub-  
conscious  
mental acti-  
vities.

§ 2. History of evolution of the Human Mind on this earth is consistent with existence of subconscious mental activities. Organic vegetative life appears before animal life. The animal is grafted on the vegetable which precedes him. Organic life is directly manifested by the needs and the appetites. There are myriads of animals who are mere bundles of needs and appetites, the senses being only teleological instruments in the service of their needs.

The impulses or tendencies to act are the creative forces working in vegetables and animals. The impulses and tendencies in vegetables and animals are parts of the ceaseless activity of the universe. Impulse is the primordial fact in all life, and the creative activity of the various impulses in the vegetable world and in organic life, *work without any consciousness in the individual organism*. They cause unconscious activities though we find them controlled and guided by ends and ideals

just as would have been the case had these activities been conscious intelligent activities in the organisms. When the impulses rise in conscious mind saturated with its light, they appear mantled in feeling, conation and cognition which organically form its nature. The deeper impulses and emotions that maintain and evolve the lives of men are deep-seated strong elements ; these use the conscious reason of man for their purposes. Reason in its cognitive aspect, in conscious Human Mind, appears as the light for seeing the value, rank, position of the different impulses and emotions. Reason regulates the divergent claims, and rules by enlisting the service of some emotion or impulse. Memories of pleasures and pains of conscious life help or oppose original impulses, modify their force, engender derivative new impulses. Consciousness helps through experience-adaptation, Consciousness through help of experience, becomes the principle of change, reform, progress in mental life ; it helps regulation of the impulses ; in adult conscious mind, the impulses cease to be blind, though we may have sometimes vague feelings and impulses without any conscious aim.

Spinoza says:—"Appetite is the very essence of man, from which necessarily flow all those things which seem to preserve him. Between appetite and desire there is no difference, save that desire is self-conscious appetite."

Similarly our conscious mind is often our self-conscious subconscious mind.

§ 3. (a) Faint impressions on sense-organs may not reach consciousness till they reach a certain intensity but may modify consciousness.

(b) Of impressions pouring in through the various senses only those attended to enter the field of consciousness ; impressions not attended to do not become conscious but their total effect may affect consciousness.

(c) The sleeper or the man in deep reverie, may respond to sensory stimuli by proper movements without any consciousness of the exciting cause or of the appropriate movement.

(d) Our ordinary sensations of sight, sound and the rest, arise out of an aggregate of elementary impressions each of which is separately unperceivable. We see a distant landscape without being able to specify all the particular impressions.

SEC. 3.  
Sub-conscious mind in relation to our External senses and in Perception.



Sometimes an impression of which we are not conscious, is detected on cessation of the impression ; such a case is one in which the impression though in the consciousness before, could not be distinguished. A miller unconscious of the sound of mill-wheel, becomes conscious of it when it stops.

The roar of a sea, the roar of a crowd are composed of many separate impressions corresponding to which discrete sensations do not remain in consciousness.

(e) A headache or any other pain may remain in the subconscious realm when not attended to ; on attention, consciousness returns. Very many stimuli may be playing upon the sense organs. Light waves strike the eyes, sound waves fall upon the ears, the skin is getting stimuli from the clothings and other objects with which the skin is in contact, the various contractions of the muscles of the skeleton affect the nerves of "the muscular sense" and the sensory nerves of the organs in abdomen and thorax may be stimulated. While all these impressions are playing upon me, my stream of thought may be engaged in some abstract mathematical reasoning ; I may remain thoroughly unconscious of the bodily sensations when deeply absorbed in my mathematical problem.

(f) Every Perception involves presentative and representative elements. The sub-conscious mind brings appropriate memories of past sensations on the occasion of a presentative sensation ; the inferences involved are intuitive and are the work of the sub-conscious mind.

(g) Sense impressions which did not enter consciousness may be recollected in dreams or in hypnotic stage or even in normal consciousness. In ordinary recollection, while recollecting the general result of a perception, details may not be recollected ; but the details may be produced by automatic writing or by hypnotism. In criminal investigation, details about description of robbers and thieves may be obtained in this way.

SEC. 4.  
Sub-consci-  
ous mind in  
Memory.

§ 4 (1) The sub-conscious mind is the great store-house of all our experience.

(2) Experiences and acquisitions of past life remain as sub-conscious effects, always acting upon the stream of consciousness or capable of being brought to consciousness.

(3) Facts which can not be recollected and thus brought to consciousness, express themselves sometimes by involuntary

muscular movements in the answers by the "talking tables" or in the writing of the "planchette." These recollections may also take place in hypnotic states.

(4) Without any consciousness of the process, our feelings towards persons and objects may undergo change, and we may entertain feelings towards others, of which we become aware only under circumstances when those feelings become objectified in our external behaviour.

(5) An idea may suggest consciously an unrelated idea through a sub-conscious idea which is related to both.

(6) Memories of dream experiences and hypnotic experiences, are conserved and influence the life of the Personality in judgments, points of view, attitudes, behaviour; these though incapable of being ordinarily recollected, may be recollected in automatic writing.

§ 5. (1) A matter after being well-considered may be left to itself and the mind may be directed to something else or be allowed to rest. After sometime, a good and sound judgment may be obtained such as could not have been obtained when the matter was laid aside after consideration.

SEC 5  
sub-conscious  
mind in  
Reasoning.

(2) Artists, poets, scientific men, mechanical experts some times find their difficulties solved by the ready judgments of the sub-conscious working of the mind, than by continuous operation of effort to solve them. After good effort and direction of attention to solve the difficulty, the matter is laid aside; after some time, the solution is obtained ready made, having been worked out in the Laboratory of the sub-conscious mind.

(3) An experienced chauffeur may rush through a street overcrowded with men, animals, vehicles, without any accident. At every moment he controls his motor carriage with reference to the traffic before him; he gets only visual perceptions of the same, and at once issue out the necessary actions; the judgments necessary for each necessary direction and control of the carriage are performed sub-consciously.

(4) The *Commonsense judgments* are the deliverances of aggregate past experiences, the process of inference being a sub-conscious act,—the resultant conclusion leaping at once into our consciousness. The correct sub-conscious cordination of past experience does not take place in equal extent in all persons; this experience includes beliefs, opinions, uncritical

tically and automatically obtained from the environment. The experience of objective facts which works, is experience as it impressed and got recorded in the individual mind. Defect in original materials, causes a defect in the result; this is one of the grounds of difference in commonsense.

(5) In every day life, we often judge correctly and act correctly by utilising large and extensive complexes of previous experience without at all bringing them before our consciousness; we see our way by what seems a series of intuitive flashes. With everchanging occasions and circumstances of life the flashes appear in different hues indicating the path for the occasions. Everyday we deal with large collections of past experience without at all bringing them in consciousness in detail. To a question, did you see this man before, the answer at once comes "No." In this answer the whole past experience of the replier is referred to. The utilisation of past experience may involve all the processes of discrimination, assimilation, choice, selection, inference, and yet it may happen that none of these processes are consciously performed. A peon is given five letters to be delivered to five different addresses of a particular town. He knows the streets of the town. He may do the job without thinking anything at all, his footsteps being automatically guided by the sense-impressions falling on the eyes, though he never travelled before in the particular order he travels now, and never had been before to the particular addresses; he simply looks for the number of the house when he enters the particular street.

The whole past experience reasonably relevant to be referred to on a particular occasion, may not always act. Apart from defects in retention and recollection, emotions and conative tendencies may inhibit or intensify recollections. In every normal mind, the conative-affective disposition always affects the operation of the intellectual activity; the differences are in degree and extent.

At every moment of life whenever we have to judge, the subconscious mind from out of its storehouse of past experience, brings into consciousness the memories *relevant for the purpose of the judgment*; this revival may be by way of a general impresssion of the result of past relevant experience when it takes the form of an intuition; or there may be revival



of discrete experiences or both sorts of revivals may take place in varying proportions. This capacity of the sub-conscious mind to bring such recollection as would lead to correct judgment, differs in different persons.

This capacity of sub-conscious mind as a ready purveyor of relevant past experiences may differ in the same person in different spheres of knowledge and action; and in the same person, on occasions, there may be temporary lapses of this capacity.

(6) An expert calculator can give the correct total of a large number of figures by glancing through them, without separate conscious appreciation of the value of each separate figure.

(7) It often happens in a train of reasoning that links do not come into consciousness at all, but they make possible the coming into consciousness the consequent.

(8) Mind may work sub-consciously along old lines of reasoning giving the result consciously.

§ 6. Two distinct trains of mental action may be carried on simultaneously—one consciously and the other sub-consciously. One train of mental action may engross the consciousness while another train controls and guides movements sub-consciously. One may read aloud with correct punctuation and pronunciation while the mind may be deeply absorbed about the argument of the author or may picture the scenes he describes; or the mind may be engaged in following a different line of thought consciously; similarly when writing out our thoughts, the mind may be consciously engrossed in the train of thoughts while the pen has been writing out correctly under the control and direction of the mind sub-consciously exerted. One may play on a musical instrument while engaged consciously in a different occupation.

SEC. 6.  
Distinct  
trains of  
mental ac-  
tion of which  
one is sub-  
conscious.

One may rush through the writing of an author on a familiar subject and can correctly grasp what is conveyed by the author without any separate consciousness of separate meaning of each word.

§ 7. In acquired skill and dexterity and in mental habits, complex operations which had been once effected by conscious effort, are performed automatically under the control and guidance of the sub-conscious mind.

SEC. 7.  
Acquired  
skill, dex-  
terity and  
habits.

## SEC. 8.

Sub-conscious mind in motor manifestations.

§ 8. (1) All behaviour takes place by movements of our body or parts of body; these movements are effected by the contractions of our voluntary muscles. A sense organ may be affected and necessary intelligent movement in response may take place as behaviour without any thing entering the illuminated area of mind (*i.e.*, the consciousness)—something else being in entire possession of the field of consciousness. So far the particular behaviour is concerned, the action is like that of a conscious intelligent mind.

(2) It was found in the case of certain animals that if the spinal chord, the trunk, the limbs, and their nervous connexions remained unharmed, the limbs may be made to execute movements that seem to be intelligently directed, even when the brain has been destroyed.

(3) The bodily organism may be taught to perform acts without any conscious direction on our part though these acts had been performed before, with conscious direction. This happens in learning to play on harmonium or on any other musical instrument.

(4) Muscular actions without the concurrence of conscious thought and will, take place in the following cases :—

(a) The pendulum consisting of a finger-ring or little ball is suspended from a thread which is held between the fingers. However steadily held, in case of some persons, it begins to oscillate like a pendulum; and answers to questions can be had from the same

(b) A forked twig is sometimes used to discover underground water or ore. Each end of the fork is held in each hand. Motion takes place through action of the subconscious mind.

(c) Planchette—which is a little heartshaped wooden table having three legs, two being furnished with small rollers and the third with a pencil. On fingers being lightly placed on planchette, it writes out and gives messages and answers to questions.

(d) A small table round which a few persons sit with their fingers resting lightly around the tip of the table, moves and gives answers according to a prearranged code.

## SEC. 9.

Some instances of sub-conscious mental process

§ 9. (1) An emotional state may be determined by circumstances, of which the individual has no consciousness. Emotional states and beliefs, may result from emotional states

and beliefs of those around us, without any consciousness of the process on our part. Imitation, suggestion, sympathy often influence our thoughts, feelings, conduct, without any consciousness on our part.

(2) A fact which by conscious effort could not be recollected, may flash into consciousness after a sleep or when we are engaged in something else.

(3) Mental changes of whose results we subsequently become conscious may take place subconsciously, either during sleep or when the attention is engrossed by some entirely different train of thought.

(4) The formative influence on the individual mind, of the moral, intellectual, emotional atmosphere around, is a subconscious one.

(5) Likings, antipathies, prejudices appearing in the conscious mind, are often the result of work in the subconscious mind.

(6) Creative activity of genius in the realm of poetry, drama, music, painting, sculpture or in any such department, often works like a spontaneous flow of fountain gushing out from the subconscious mind within. New combinations of ideas, formations of new trains of thought, take place in many cases in the sub-conscious mind. The various impulses to activity, on many occasions, work out the final result in the sub-conscious mind.

(7) The meaning is experience appearing like a pyramid the whole being sub-conscious, except the *cone* which by a *feeling-colour* shows the meaning. There are millions of such feeling-colours according to millions of meanings of millions of situations. By the index of this feeling-colour, the implied sub-conscious elements in the meaning may be unfolded or made explicit.

The *relational consciousness* which renders clear the meaning, the bearing of present consciousness, involves action, of past experience in the sub-conscious mind.

(8) In Hypnotic stage or in condition of mind somewhat resembling the same, the action of mind on the body is greater than what it is in the normal state. Mental healing shows the effect of mind upon the physiological operations of the body. Mental healing involves sub-conscious mental activity.



(9) Sub-conscious element in a witty remark springing to one's lips.

(10) Sub-conscious mind works in solution of problems during sleep or when the mind is otherwise engaged consciously.

(11) Sub-conscious activity is implied in sudden religious conversions.

(12) Sub-conscious activity is implied in experiences of mystical religions.

SCE. 10.  
Action of  
conscious  
mind over  
sub-consci-  
ous mind

§ 10. Sub-conscious activity is sometimes set free by conscious volition—some conscious effort or a general attitude of the will. The capacity of the conscious mind, to rule over the sub-conscious mind, admits of expansion and growth by culture. The passage from consciousness to sub-consciousness has no hard and fast fixed boundary. It is a slow passage through various degrees.

SEC. 11.  
Relation be-  
tween con-  
sciousness  
and sub-  
conscious-  
ness.

§ 11 Consciousness and sub-consciousness are different parts of one and the same organic life. They help each other, they oppose each other; they compensate each other. The same life, flowing when under light, appears conscious; and when under shade appears sub-conscious. Sometimes they flow as two different streams. Sometimes a sub-conscious vice is compensated by a conscious virtue; and a sub-conscious virtue may engender a conscious regardlessness for that virtue.

Dr. Jung is of opinion, that unconscious psychic events produce many of the phenomena of hysteria and other psychoneurosis; that the hallucinations of the insane are the outcome of unconscious processes; and that they are not derived from disease of brain-cells. Dr. Jung is of following opinion:

"Hallucinations occurred in normal savages and normal civilised individuals. They were normal psychic events forcing themselves across the threshold from the unconscious in an abnormal way. The normal functioning of the unconscious broke through normal consciousness in abnormal fashion. In dementia precox, it could be shown that the unconscious obtruded itself unduly. Mental balance was a scientific term and not a figure of speech. The individual's conscious life may be onesided but failing to realise this, he might battle against his unconscious, that is to say against whatever really compensating elements in him. Lack of harmony between the conscious and the uncon-

cious was at the basis of many psychosis. In paranoia the patient might be constrained to defend himself against external criticism, simply because he was too much threatened from within. The tearing asunder of the pairs of opposites constituted by conscious and compensating unconscious elements explained the pathogenesis of the psychosis and the psycho-neurosis." (Lancet.)

§ 12. Freud's theory of subconscious conflict of conations is based upon the assumption of a sub-conscious mind.

SEC. 12.  
Freud's  
theory of  
sub consci-  
ous conflict  
of conations

After a conflict amongst our organized conative tendencies, a defeated tendency may not be killed but may take shelter in the sub-conscious mind, unable to emerge into conscious field. The tendency on being repressed in conscious mind, lives in the sub-conscious mind; seeking constantly to come to conscious field but the subject's moral nature sub-consciously prevents the defeated tendency to come out into the conscious mind. There goes on a perpetual sub-conscious conflict.

In dreaming, day-dreaming, the suppressed impulse tries to satisfy itself symbolically. According to Freud, the symptoms of the hysteric are like the thinking of the dreamer, in which there are symbolical expressions of repressed tendencies. Baseless conviction of having done some reprehensible action, or other obsession, performance of senseless acts, paralysis of organs, legs, arms, organs of speech, anaesthesia of parts of skin or of other sense organs are among symptoms of hysteria. The repressed impulse creates a number of disguises in the symptoms of hysteria whereby it satisfies itself while the moral sense is made to believe that the repressed impulse is not being satisfied.

The cure of these hysteric symptoms is said to be to make the conflict a conscious one, by finding out the rivals and dragging them into consciousness.

## CHAPTER VI.

### THE SELECTIVE ACTIVITY OF THE MIND

#### SEC 1. Attention

§ 1 In our chapter on consciousness, we referred to the Selective Activity of the Mind. This activity is exercised through attention. "Attention" in the wider sense is co-extensive with consciousness; but in the narrower sense, "attention" is confined to the most illuminated portion of consciousness, moving with the focus of illumination. Attention, in a wider sense, is a necessary element in all states of consciousness. The centre of attention is the point of the greatest consciousness or the greatest illumination. In a narrow sense, attention is the adjustment of the mind to the portion of the greatest illumination. The area of attention in the narrow sense, is less than the area of the consciousness.

Conscious mental conation or conscious subjective willing is based on attention. Attention brings mental states (1) from subconsciousness to consciousness (2) from fringes of consciousness to focus or centre of consciousness. Attention is a motor phenomenon; it means expenditure of energy. It depends upon available energy. Its strength diminishes in exhaustion and fatigue. Excessive fatigue and exhaustion make attention impossible, blots out consciousness and brings sleep.

According to Th. Ribot "attention is not a faculty, a special power, but a predominant intellectual state, resulting from complex causes that induce a shorter or longer adaptation." Th. Ribot restricts very much the meaning of the term "attention." The narrow scope given by him to "attention" would appear from the following: Th. Ribot says: "Eliminate first the general routine of life—that enormous mass of habits that move us like automatons with *vague and intermittent states of consciousness*. Eliminate the periods of our mental life in which we are *purely passive* simply because the order and succession of our states of consciousness are given to us from without, and because their serial connection is imposed upon us. \* \* \* Eliminate



that state of *relative intellectual repose*, in which people 'think of nothing', that is, wherein the states of consciousness have neither intensity nor clear determination: intellectual non-challance, reverie in all its degrees. Eliminate finally *all states of passion and violent agitation*, with their disorderly flux and diffusion of movements. And having made these eliminations with perhaps a few others, we may then credit to the general account of attention that which remains. In this general account, the cases of spontaneous attention make up by far the greater number; the clear and indisputable cases of voluntary attention constitute the minority; in many men and women they amount almost to nothing."

§ 2. The functions of attention are the following:

SEC 2.  
Functions of  
attention.

(1) To keep a mental state fixed.

(2) To bring a mental state from the fringe of consciousness to the focus of consciousness.

(3) To bring a mental state from sub-consciousness to consciousness.

(4) To concentrate its light on aspects, elements, parts of concrete living mental states and processes, as seen through memory, to enable carrying out of the processes of discrimination, differentiation, analysis, disintegration of concrete mental states and processes.

(5) To concentrate its light to enable carrying on integration of the aspects, elements, parts of a concrete mental state found by analysis, through the help of comparison.

(6) As expectant attention, it adjusts the mind to receive an impression expected. It shortens the time, for consciousness of an impression, and increases the effect of the impression upon the mind.

(7) Sensibility of the aspect upon which attention is concentrated is increased, while sensibility of the aspect not attended to, is diminished. Extraordinary increase of sensibility of some sense when other sense or senses are wanting, is due to a certain extent to habitual direction of attention to the particular sense.

Other things being equal, habitual attention to one form of mental activity develops that aspect of the mind, while there is a corresponding want of further growth in another aspect of the mind.

The great exaltation of sensibility in hypnotism and somnambulism, is due to abnormal concentration of attention.

Discrimination, Assimilation imply activity of attention as well as of intellection which sees, compares, secures the result of comparison and remembers.

SEC. 3.  
Extent of  
attention.

§ 3. (1) The number of things that are attended to distinctly at the same time is limited. A person may have gone to a place a hundred times but may fail to say about the different kinds of trees there with their respective numbers; may have seen a person many times but may fail to say whether he has a beard; may have been in a room many times but may fail to speak about the number of windows there. Attention is always selective, only the particulars attended to may be remembered. The general impression of a scene or a place, is ordinarily attended to; and as regards details, one or more may or may not be attended to. A place may be identified by a witness but he may fail to give a detailed particular description in his deposition.

(2) The question considered in a theoretical and scientific sense, takes a different shape. Practically on going to a place we may not attend to much; but nevertheless, we exercise there a succession of acts of attention. But it may be asked to how many things can we attend simultaneously?

(a) Professor James says:—"It then, by the original question, how many objects can we attend to at once, be meant how many entirely disconnected systems or processes can go on simultaneously, the answer is, not easily more than one, unless the processes are very habitual; but then two or even three without very much oscillation of the attention. Where, however, the processes are less automatic, as in the story of Julius Cæsar dictating four letters whilst he writes a fifth, there must be a rapid oscillation of the mind from one to the next and no consequent gain of time."

(b) Professor Stout says:—"Can there be two separate and disconnected attention-processes within the stream of individual consciousness? The answer to this question is that such division of attention does not occur normally, though something like it, is found in certain pathological cases". "Can the same attention process be simultaneously concerned with a plurality of different objects? The answer is: Yes if the different objects are presented as partial features or aspects of some kind

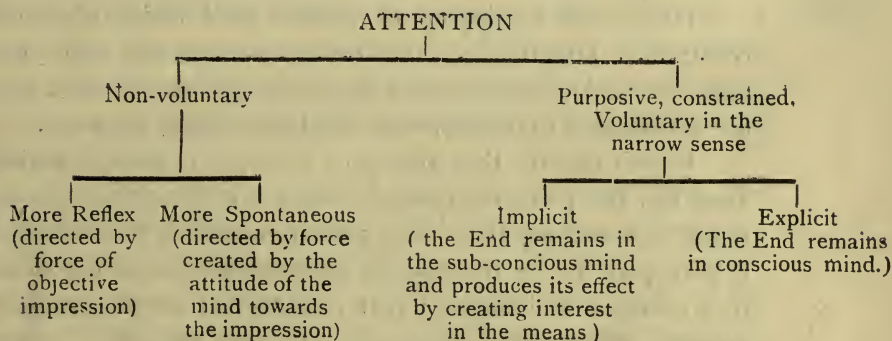
of whole—if they are thought of as in some way connected with each other, otherwise, we can not either simultaneously or successively attend in the same attention-process to different objects. For the unity of attention-process is unity of interest, and unity of interest exists only in so far as we are and continue to be interested in the same object”.

(3) The interest for the time being controls attention and makes attention exercise a selective function as to what objects falling within the range of experience should be allowed the favour of attention. Different persons of divergent interests will attend to divergent aspects of the same scene, the same place, the same occurrence; they will thus, recollect differently during depositions. This is why in determining the value of a witness's deposition about a certain occurrence witnessed by many, the question of what interest then filled the mind of the witness becomes relevant.

§ 4. Attention may appear in different forms. But attention as it actually exists, is often a combination, the share of each changing, one increasing and the other decreasing, and one form may become zero.

SEC. 4  
Various  
forms of  
Attention.

The following table shows different forms :



With exhaustion, weariness, spontaneous attention becomes constrained and causes greater exhaustion.

(1) In non-voluntary attention, the object of consciousness whether a percept of the External world or a subjective mental state—though remaining in consciousness through attention activity—keeps attention enamoured by the great interest roused by it, makes attention energise with great ease automatically



spontaneously. The attention lingers fondly and happily like a person by the side of the object of his affection. In different persons, the non-voluntary attention has different spheres of activity according to their respective interests, the nature of their character, mood and disposition.

(2) In *purposive constrained attention*, the elements to be noticed are :—

(a) A feeling of effort, of strain, of endeavour on the part of self.

(b) The presence of an End in conscious mind or a clear explicit presence of the means in conscious mind—the End working from subconscious mind and creating interest in the means.

(c) Choice of the conscious end or conscious means against rival claimant or claimants.

(d) Endeavour to draw the mind from the other claimants.

Voluntary (in the narrow sense) attention implies opposition and a victory after struggle. The feeling of effort may be of various degrees. Attention of the constrained kind causes speedy exhaustion, a quick consumption of the energy available for the mental activity. Non-voluntary attention can be continued longer.

Habit and rousing-up of interest will make what was constrained attention, a more or less spontaneous one. One unaccustomed to depose as a witness will get sooner tired than one accustomed to depose, other conditions being the same.

It can't be said that voluntary attention is always derived attention, the primary interest being not in the object attended to but in something else. The primary object in which interest is felt may be in the objects attended to, but owing to the then presence of influences that tend to distract the attention strongly, effort may be necessary to keep the attention confined to the object of its then interest.

SEC. 5.  
Impressions  
not attended  
to.

§ 5. (1) Impressions may not enter consciousness at all but may produce a cumulative effect upon consciousness. Though not separately and discretely discerned, they may colour and affect the total consciousness as a whole. Compare the consciousness of reading a book in a dark closed-room with the consciousness of reading a book in a cool breezy morning on a river-side amidst smiling nature.

(2) Impressions may enter consciousness very quickly and may depart very quickly, obtaining only very rapid momentary glances of attention. These enter the particular course of consciousness controlled by the interest of the attention, form inseparable and unavoidable links though attention leaps over them so quickly that they may be said as remaining practically in subconscious region and may be incapable of being recollected. While reading an interesting book, consciousness travels from thought to thought; of language, portion may never enter conscious mind and portion may be very rapidly attended to.

There is no fixed boundary between consciousness and subconsciousness. The light of consciousness often fades so gradually, that one can't say where the boundary is. When sunshine bathes the dancing billows of a sea, it becomes difficult to lay down the boundary line of the sun-lit portion. If the sunshine flickers and the billows dance, it becomes more difficult to mark the boundary-line. In human mind, the sunshine of attention flickers whereas the billows of the restless mental life dance.

§ 6. What is called continuous voluntary attention is a quick series of successive flashes of attention. It involves much expenditure of energy to carry on even this sort of voluntary attention continuously for a long time. Non-voluntary attention often comes to our help even in our many so-called processes of voluntary attention continued for some length of time.

SEC. 6.  
Duration of  
voluntary  
attention.

Professor James says:—"There is no such thing as voluntary attention sustained for more than a few seconds at a time. What is called sustained voluntary attention is a repetition of successive efforts which bring back the topic to the mind. The topic once brought back, if a congenial one, develops; and if its development is interesting, it engages the attention passively for a time." "No one can possibly attend continuously to an object that does not change." "The condition sine qua non of sustained attention to a given topic of thought is that we should roll it over and over incessantly and consider different aspects and relations of it in turn. Only in pathological states, will a fixed and ever monotonously recurring idea possess the mind."

SEC. 7.  
Interest and  
attention.

§ 7. Interest is the result of the reaction of the self in the presence of some presentation in consciousness or in virtue of the spontaneous motion of the self—depending upon the affective-conative mental constitution of the self.

Interest is the feeling-coloured affective passive aspect of the same reality of which attention is the active aspect. Attention follows interest; interest follows attention; both the expressions may be accepted. In the abnormal functionings when attention is *chained* to something painful against our deliberate desire, an overpowering sense of present interest drags us like victims. These arise from more or less disorganization of self or from want of sufficient mastery by self, when attention and interest seem as dictated from outside.

SEC. 8.  
External manifesta-  
tions of sen-  
sorial atten-  
tion and Re-  
flection.

§ 8. (1) Sensorial attention contracts occipitio frontalis—the muscle which occupies the whole region of the forehead; there are transversal wrinkles on the forehead; eye-brows are lifted; eyes remain wide open; in extreme cases, mouth remains wide open.

(2) Reflection lowers the eye-brow; small vertical folds in the space between the eye-brows are formed; the mouth is closed; the eye is partially or completely closed or it looks within.

SEC. 9.  
Oscillations  
of attention.

§ 9. Consciousness is a rush, a continuous motion. But conscious study of our mental states *i. e.* conscious reflection of mental states is possible by looking statically. Attention, in the widest sense, is found in the statical aspect of consciousness. Consciousness is both at rest and in motion always. Consciousness is a synthesis of the opposing abstract facts—rest and motion, both always existing in Living Reality. Attention involved in this aspect of rest, cannot be maintained for any length of time. Attention works not continuously but as a series of closely-following acts of attention; it is always changing in the degree, which may vary from almost non-existence and sometimes non-existence to a very great intensity of attention. *These oscillations of attention* are seen in both sensorial attention and in the attention of reflection. Th. Ribot says: "In the silence of the night, the ticking of a watch placed at a certain distance, is at one moment not heard and in the next it is distinctly reinforced. The same is true of the sound of a waterfall; and similar oscillations have



been observed with optic and tactile sensations. These variations are not objective ; they can only be subjective."

§ 10. (1) Attention may be changed to a fixed mental state and may not be allowed to move as in normal mind. Attention here, hovers over a fixed mental condition, and maintaining itself there by hovering over the associated mental states or aspects of the particular stable one and by throwing its flashes of light on the same point. In fixed ideas, hypochondria, overpowering ecstasy, this condition is found.

SEC. 10.  
Diseases of  
attention.

(2) Attention may become very weak and may fail to introduce the strong element of stability which supports order in our consciousness. In acute mania, certain forms of delirium, mental states rush on unbridled. Inhibition or self-control exercised through attention may fail considerably or cease in case of weakness of attention. This happens in all forms of exhaustion. In extreme states of bodily and mental fatigue, in intoxication, in convalescents, in persons suffering from irritable weakness, this condition may happen.

(3) The infirmity of attention is found in different degrees, in idiots, in imbeciles, in the demented and in the weak-minded. Esquirol says :—"Imbeciles and Idiots are bereft of the faculty of attention which renders them incapable of education."

## CHAPTER VII.

### SLEEP AND WAKEFULNESS

SEC. 1.  
Sleep.

§ 1. (1) *Sleep of consciousness* is absence of conscious response or absence of its states and processes.

(2) *Sleep of subconscious mind* is absence of its response to stimuli or absence of its activity.

(3) *Sleep of non-conscious organism* may be absence of its response to stimuli or absence of its activity.

Sleep is a temporary cessation, a temporary stoppage. It is absence of actual manifestation but implies potential presence of life, mind and consciousness. When the cessation or stoppage is a permanent one, it is a case of death.

SEC. 2  
Sleep of  
conscious-  
ness.

§ 2. This sleep is of various degrees. The condition of consciousness is "attention" in the widest sense. Dispersal of "attention," withdrawal of "attention," lead to fading *away* of consciousness which leads to sleep. *Monotony weakens the* activity of attention, and if continued may lead to its withdrawal and may produce sleep. Sleep tends to *draw* all tired minds and tired bodies. In the condition of conscious wakefulness, we are asleep to the various impressions that affect the senses but are not attended to. Even as regards external percepts that are attended to, attention may be of various degrees and may vary in extent and depth. One may be in a partial sleepy state in his conscious wakefulness, when the things perceived are only dimly perceived.

Sec 3.  
Sleep of  
subconsci-  
ousmind

§ 3. The wakefulness of subconscious mind and its readiness to produce before the conscious mind, all requisite and relevant memories, are essential for correct perception, correct memory, proper judgment, correct recognition, for understanding and grasping the meaning and significance of language used. But this subconscious mind in the same person relating to the same department of life, does not remain equally awake always. The sleep that steals over conscious mind also affects subconscious mind.

When a witness feels sleepy either because he is tired or because of the enervating heat or because of what is to him monotony, he may fail to understand correctly the questions put to him ; his subconscious mind may not bring up the right memories and he may depose honestly what is false. A judge when he feels sleepy either because he is tired or because of oppressive enervating heat or owing to want of good sleep on the previous night, may fail to understand correctly the arguments addressed to him, and if he decides in that state, may fall into error. In that condition, he may err in understanding correctly the questions put to the witness and answers given by him, and if he records the deposition in a language other than that in which questions are asked and answers are given, he may record something which is not correct. A greater degree of wakefulness is required in recording deposition in a language other than the one in which the witness speaks, than simply in recording the sounds uttered by the witness. But when consciousness is blotted out in dreamless sleep, the subconscious mind does not always sleep. Ordinary sounds and noises are not attended to during sleep but if any unusual suspicious noise happens, the subconscious mind will at once bring consciousness of wakefulness. This shows that subconscious mind was not entirely asleep.

A person who before sleep on much consideration could not solve a problem may after rising from sleep get the solution springing up to his consciousness ready made. This shows that subconscious mind was active.

There are cases in which power was developed of rising from sleep after lapse of a fixed period as resolved before sleep. In these cases the subconscious mind keeps record of lapse of time and wakes at the proper time.

In the unconsciousness produced in some hysteric fits, the sleep leaves sufficient wakefulness of the subconscious mind as would protect the body from any serious accident. But in the unconsciousness of a severe epileptic fit, the sleep may penetrate the subconscious mind so much that it can not protect the body from serious injury.

§ 4 In dreams, hypnotism, somnambulism, there is partial sleep and partial wakefulness. In Hypnotism and somnambulism, attention is abnormally concentrated and kept entirely

SEC. 4.  
Wakefulness  
in Sleep.



chained within the wakeful portion, the rest being completely shut out by deep sleep, and the passage of attention to that excluded portion being prevented by a chaining down of the attention.

In dreams, the attention on the wakeful portion may be weak or strong. In the partial wakefulness of dream, all past experiences do not come up and the mind is thus temporarily disintegrated and dissociated. It is a partly awake mind left as it were in a water-tight compartment where the free waters of other experiences can not enter. The full mind does not play.

Bergson says : "One sleeps to the exact extent to which he becomes *disinterested*. A mother who sleeps by the side of her child will not stir, at the sound of thunder but the sigh of the child will wake her. Does she really sleep in regard to her child."

SEC. 5.  
Sleep in  
Wakeful-  
ness,

§ 5. As in dreams we are partially awake in our sleep of consciousness, so when consciously awake, the attention (1) may not operate actively but remain in a dull listless dispersed condition (2) may through the intensity of concentration remain chained to a limited sphere (3) may through the effect of some overpowering impulse or feeling or strong suggestion of some person or persons in authority or persons habitually *obeyed* or revered or looked up to, be more or less incapacitated from going beyond a certain area.

These conditions may prevent the operation of the whole mind. Any failure of the whole mind to act as it normally acts in a person, amounts to a partial sleep in wakefulness. This partial sleep by producing intense consciousness on the area of concentration is good in a witness and in a judge when the concentration is relating to matter before them. But this partial sleep is dangerous in both of them when arising from dull listless dispersed condition of the attention or when arising through the effect of some overpowering impulse or feeling prejudicial to the interest of justice or suggestion of some person or persons in authority or of person or persons habitually revered, obeyed or looked up to, when such suggestion is against the interest of justice.

The attention may remain in a dull listless dispersed condition owing to the state of the body.

A witness may be sometimes reduced to a partially hypnotised condition under the influence of an advocate or

pleader or under the influence of the Judge. In such a condition by leading questions, answers which are wanted, whether true or false, may be got out of him. In the interest of efficient administration of justice, both the Bench and the Bar should be always on guard to save a witness from falling in this helpless condition.

§ 6. Ordinary sleep is making oneself unconscious. But there can be sleep of the entire bodily functions. This condition of sleep of the vital operations of the human body can not be induced ordinarily by ordinary persons. It is an art which was known in India. Sadhu Haridas of Panjaub was kept buried for forty days and the chest in which he was buried was sealed with the stamp of Ranjeet Singh; when he was brought out he was apparently lifeless. Sadhu Haridas was once in a grave for four months. Another fakir was buried in an unconscious state at Lahore in 1837 and after six weeks he was brought out when he looked apparently like a dead man. There was no pulsation of the heart. Gradually this person was restored to life. During this period of six weeks, the grave was guarded by soldiers of a regiment stationed at Lahore. This phenomenon is a case of suspending temporarily vital functions. Mice, Snakes, bees and some reptiles sometimes seem to suspend vital functions for an extended period. In Russia, fishes brought frozen stiff on being plunged into cold water are found to come back to life. A Snail brought from Egypt and thought to be dead was kept in a shelf in the British Museum in March 1845. In March 1850, an apparent growth was found in its mouth. It was then placed in water when it appeared living and ate cabbage leaves given to it. Colonel Townshend could suspend heart's action at will so that no pulsation could be detected. The longest period he remained in this death-like state was about thirty minutes. Without any consciousness or volition on his part, vital activity used to return slowly.

SEC. 6.  
Organic  
Sleep.

§ 7. Hypnotism is partially sleep and partially wakefulness. The wakefulness follows the line of the suggestions of the operator while memories of associated experiences—the rival of which happens in normal mind, are blotted out. Hypnotism thus creates personalities from portions of entire real personality, creates new fictitious worlds of knowledge,

SEC. 7.  
Hypnotism.

artificially carved out and separated from the real objective world of knowledge and completed as a total whole from the partial abstractions.

Hypnotic sleep is quite different from natural sleep. Hypnosis is a peculiar abnormal condition of the mind in which the activity of the voluntary attention ceases but activity of spontaneous non-voluntary reflex attention remains fully available for suggestions that come from the Hypnotiser—the attention being unable to go outside the suggestions of the Hypnotiser. The value and truth of the suggestions can not be checked by experiences outside the suggestions. In the hypnotic stage, the corrective influence of experience outside the suggestions being taken away, the hypnotised person believes in the reality and truth of the suggestions made to him. There are various degrees of hypnotisation; only in the stage of hypnotic coma, the corrective influence of experience entirely ceases.

Physical or psychical or a combination of both means may be used in producing hypnosis. Sleep of Hypnosis may be induced by holding a finger or any bright object at an uncomfortable angle above the eyes and the operator stroking the patient's forehead and suggesting sleep; by the continuous monotonous noise of a revolving clock. Passes may be used in addition. Hypnosis may be produced by inducing the subject to think of nothing and to gaze at the operator and by suggesting the phenomenon of sleep. Stroking the skin on the forehead and temples is in most people of great service in quieting any nervousness or excitement and in bringing a state of drowsiness. Hypnotic sleep may be of several degrees.

(1) Sleepiness in which the subject can resist suggestions and open his eyes.

(2) Light sleep in which the eyes can not be opened and suggestions can not be resisted but on awaking the incidents during hypnosis may be remembered.

(3) Deep sleep, the incidents during which can not be remembered on awaking. In hypnotism, any resistance on the part of the subject should be removed before the operator can hope for success. The best subject for hypnosis is the person who is willing to be hypnotised and has the ability to concen-



trate his mind upon it. It is difficult to hypnotise insane persons. By putting us in a vacant state of mind with monotony playing upon it, we can bring us to a state of what may be called self-hypnotisation, and that state may be utilised for securing health of body and of mind by beneficial self-suggestions. Under hypnotism, suggestions are received by the mind without criticism and acted upon. In the hypnosis of deep sleep, insensibility to pain is produced. In the hypnosis of light sleep, suggestion becomes necessary to remove sensibility to pain. In deep hypnotic sleep, illusions and hallucinations can be produced in some persons by suggestions. Such a subject may be made to drink a cup of water as a cup of milk or may have the hallucination of drinking a cup of milk when no such cup exists at all. Hypnotic condition is an attitude of the mind when the controlling influence of the organised coordinated system of entire mental experiences or of the whole objective world is annulled; in the removal of these controls, every suggestion is believed as true and every image on suggestion may develop a percept or hallucination. This artificial condition of hypnosis thus resembles dream-state of sleep; attention which accompanies consciousness can not go beyond the narrow area of consciousness created by the suggestions. Hypnosis is a condition when every individual constituent element of the mind is free from the organisation of mental life and becomes as it were a separate complete mind, during the operation of the suggestions. The breach of the ties or relational links that bind the different parts may be partial or complete. When complete, the consciousness of hypnosis can not be recollected on return to normal life. Every hypnosis is a temporary artificial division of empirical personality, more or less complete or entirely complete.

In Hypnosis, Voluntary attention ceases. Spontaneous reflex attention accompanying conscious mental states rushing up without any effort or strain, rules.

An effect of Hypnosis is to create extreme suggestibility by removing the controls of our other earthly experiences. We express no opinion on the question whether Hypnosis may open vision for knowledge beyond the ken of the ordinary individual mind.

In Hypnosis, there is hyperæsthesia of the senses of touch vision, hearing, smell, pressure and temperature.

SEC. 8.  
Views of  
a Learned  
Doctor.

§ 8 Dr. A. M. Hutchinson in "Hypnotism and self education" says :—"Post-hypnotic hallucinations are such as retain their hold on the subject after he has been awakened, and which can only be dispelled by re-hypnotising the patient, and suggesting contrary ideas. A hypnotised person may thus be made to believe that he has been robbed of his purse, or that he has been witness of a terrible crime, the details of which he is made to see. If questioned about these after waking, he will describe the details with the utmost confidence and would be capable of giving evidence to that effect in a court of law."

"It is familiar to us all how readily some people can similarly fabricate the details of a scandal, can so to speak create for themselves the hallucination of a scandal, every incident of which they believe themselves to have seen. For this it suffices simply that some one person should rest under slight suspicion, that a slight rumour should be set afloat, and ere long idle onlookers create the details which are wanting, and which they implicitly believe they have founded on fact. Nowhere are more striking instances of this seen than in law-courts, when an attempt is made to sift evidence. It is a well-known fact that a clever counsel may lead a witness into accepting and affirming most contradictory statements, by merely suggesting with an air of conviction that certain events had or had not been witnessed by him."

"In carrying out experiments to test this matter, it has been found that in order to convince some people that certain things have been done or witnessed by them, it is only necessary to continue to insist strongly and with conviction that such is the case in order to succeed in the end. Can not most of us recall occasions when it has been so insistently suggested to us that we had done a certain thing that in the end we have hesitated doubted and wondered whether after all we might not have done it and quite forgotten the fact?"

(On Post-hypnotic suggestions) Dr. A. M. Hutchinson says :—"These are suggestions given to the patient during the hypnotic sleep, to take effect after the lapse of a certain interval of time, it may be hours or days or weeks. It has been shown that in certain subjects, specific commands can be given which are executed, with the greatest exactness, though the subject is himself quite unaware why he has done the action



and if questioned may attempt to explain it away or maintain that he did it of his own accord. Many experiments have been carried out by Dr. Milne Bramwell and others on the following lines. It was suggested to a woman of poor education that after the lapse of so many thousand minutes she would write on a piece of paper her name, the hour of the day and the day. At the appointed time she noted name, hour and date as commanded, in spite of the fact that she was mentally incapable of calculating the time. Other subjects were commanded to deliver messages at a fixed time at a certain house, and they too succeeded, in spite of obstacles purposely put in their path, in carrying out these commands."

§ 9. It means sleep-walking. It is a condition similar to hypnotism, induced by the sub-conscious self. The eyes are sometimes closed, sometimes half-closed and frequently quite open; the pupil is sometimes widely dilated sometimes contracted, sometimes natural and for the most part insensible to light. A lad somnambulist went to the stable, saddled his horse, asked for his whip, disputed with the toll-keeper about the fare but had no recollection whatever of his acts on awaking. Another lad somnambulist used to rise from bed and to recite passages from Shakespeare, Milton and then go to bed all without any recollection on awaking. A young ecclesiastic used to compose and write sermons, read them aloud after writing and correct them in somnambulism. Another somnambulist used to translate and look for words in the dictionary during somnambulism.

SEC. 9.  
Somnam-  
bulism.

A man of 27 of steady habits in a fit of somnambulism killed his child taking it as an imaginary wild beast.

§ 10. Dream is a condition when there is consciousness but only of certain confined areas; the attention then remains chained only to definite areas of mind, and thus it has some similarity to hypnotic condition. There is no reference to the whole experience. The dream-personality is a dismembered personality like the personality of double consciousness. When this dismembered dream personality influences life of action or response of the organism to objective nature, it passes to a pathological condition and becomes a disease. Dreams may be suggested by any impression of any sense during sleep or from any feeling connected with any bodily organ or in relation to the

SEC. 10.  
Dreams.



realisation of a desire. Due to slight irregularities or disturbances of functions, the constituent parts of the organic consciousness of our waking life, may become split up in sleep and any of them may suggest dream. In sleep, though any of the suggestions aforesaid may start the dreams it is carried on by the automatic action of the subconscious mind or brain.

It is unnecessary to enter into the question whether dreams agreeing with Reality may happen through action of other minds.

Dream is mental activity without any living adaptation to the Reality. Sleep in which we dream of things which engrossed our attention during the day, is very bad sleep; it is a continuation of wakeful activity of the day.

According to Professor Dr. Sigm Freud, "Dreams can be divided into three classes according to their relation to the *realisation of desire*. Firstly come these which exhibit a non-repressed, non-concealed desire; these are dreams of the infantile type, becoming ever rarer among adults. Secondly dreams which express in veiled form some repressed desire; these constitute by far the larger number of our dreams and they require analysis for their understanding. Thirdly the dreams where repression exists but without or with but slight concealment. These dreams are invariably accompanied by a feeling of dread which brings the dream to an end. This feeling of dread here replaces dream displacement."

It seems to me that dreams are often Mother Nature's provision to keep us in a state of sleep, to prevent us from putting us in living conscious adjustment with the objective world, by diverting the impulse coming from within or the reflex impulse on the occasion of sense-impression, to dream-work.

According to Prof. Bergson, the mechanism of the dream is the same as the mechanism of perception. Bergson says:—"among the phantom memories which aspire to fill themselves with colour, with sonority, in short with materiality, the only ones that succeed are those which can assimilate themselves with the colour-dust that we perceive, the external and the internal sensations that we catch etc., and which besides respond to the affective tone of our general sensibility. When this union is effected between the memory and the sensation, we have a dream." \* \* "In both cases [*i.e.*, dream and perception],

there are, on one hand, real impressions made upon the organs of sense and upon the other, memories which encase themselves in the impression and profit by its vitality to return again to life."

## CHAPTER VIII.

### THE SENSES.

#### SEC. 1. Psychology of the Senses.

§ 1. The question of coming into the consciousness of the witness as sensations, the impressions made by the objective world upon the mind of the witness through the bodily organism is valuable as a part of the psychology of the witness-mind.

The Judge has to exercise his eyes and ears during hearing of a case. Examination of an immoveable property—the subject of a case, the inspection of a scene of crime, the examination of a material object produced before the court, require also use of the senses.

The external world acts upon the Human body ; conscious perception is the result of this action, and of the reaction of the, human mind upon the stimuli. *The general nature of sensation* in the consciousness, depends upon the *structure of the sense organ* and its nervous connexions. *Light sensations* arise, on the eye being acted upon by ether waves or by mechanical pressure or by the circulating blood being mixed with narcotic.

The ear being acted upon by the air-waves or by mechanical force or electricity, gives rise to *sensations of sound*.

Stimulation by electricity, may give sensations of light, sound, odour, taste or a feeling of pricking, according to the nature of sense organ. No nerve of one special sense can perform the function of nerve of another special sense. Ear can not distinguish between colours ; eye can not distinguish between sounds.

A sense organ is a receiver. We have direct receivers for all the chief kinds of physical energy except electricity. The simplest and the most primitive sensations are those caused by the stimulation of the skin and viscera, touch or pressure, heat, cold, pain.

#### SEC. 2. Colours.

§ 2. The spectrum has red at one end and violet at another. At the red end, the light waves are the longest and at the violet end, the light waves are the shortest.



Simultaneous excitation of two colours forming a pair of complementary colours, yields a colourless sensation. If one sees a sharply defined colour of a complementary pair and then looks upon a colourless surface, the other colour of the pair appears as a negative after-image. Two colours of a pair of complementary colours may be called antagonistic colours. Purple and yellowish green; violet and yellow; the red and a certain bluish-green; are antagonistic colours.

The totally *colour-blind* person sees the colours of the spectrum as shades of grey. The colourless sensations vary only in brightness; the coloured sensations vary both in brightness and in colour. The colour sensations vary in *tint* by mixing of stimulus yielding colourless sensation and of stimulus yielding coloured sensation.

According to one authority, about 4 per cent of European male population sees a pure green or a pure red as grey. These red-green blind people can not enjoy the green face of nature. Under ordinary conditions, yellow is the brightest colour sensation. But walk to a garden full of variously coloured flowers, as shades of the evening gradually cover the landscape. When the eye becomes adapted to the twilight, the green becomes the brightest colour instead of yellow, and the red colours become darker, and the blue colours appear lighter. As light fades away and the eye becomes sufficiently dark-adapted, colours look as shades of grey.

In the diminution of brightness, red disappears before blue. The extreme periphery of the retina is totally colour-blind; a colour-stimulus acting on the extreme periphery would appear as *grey*. In the retina, there are three zones: (1) A central zone of complete colour-vision (2) a middle red-green blind zone (3) an outer totally colour-blind zone. The existence of three zones shows how witnesses may differ about colour of an object though all speaking truthfully their experiences.

§ 3. If a little cross be made on paper and if we look at the cross with left eye closed, a spot on the right two-inches apart, of the size of a pea, would be invisible owing to the blind spot of the Retina. The size of the blind spot is large enough to cover in the heavens an area which has twelve-times the diameter of the moon. It may cover a human face at a distance of 6'.

SEC. 3.  
Blind spot.

X

X

SEC. 4.  
Cutaneous  
sensibility.

§ 4. (1) The entire surface of the skin is sensitive to changes of *temperature* but there are certain *cold spots* often closely grouped in chains and clusters, being extremely sensitive to cold. There are also *heat spots*.

(2) There are spots on the skin very sensitive to *light touches*; on the palm and on the sole, *touch-spots* are to be found in abundance.

(3) Although in the case of sufficiently intense stimulus every point of skin would possibly produce pain, a system of *pain-spots* can with some uncertainty be found on the skin although more numerous and more variable in sensitiveness than touch and temperature-spots.

(4) If the skin be touched by two compass points which are too close, the skin appears to be touched at only one point; the least distance at which a double touch can be felt as two gives what is called "spatial threshold."

(5) A skin surface is deprived of all sensations, temperature, touch, pain, if the nerve in connection with this skin surface be cut across. But on pressure to the tissues underlying the skin, a sensation is produced. This sensitiveness to pressure in the deep layer is different from ordinary cutaneous sensibility; when this pressure exceeds a certain limit, pain is produced.

(6) Touch experiences may become important in case of experiences in the dark. Sensations of pressure differ greatly on different parts of the body. There are blind persons who can perceive differences in colour in cloth by touch, the various pigments and their medium giving a different surface quality to the cloth they colour.

It is very difficult to discover with closed eyes the angle made by a dagger thrust against the body or to determine the direction from which a push or a blow has come. But it can be said in what direction a handful of hair is being pulled.

The perception of a peripheral pain occurs an observable period after the shock. It has been said by an authority, that stabs, shots, and blows are felt as pushes; that rising of the blood is felt almost immediately; that pain comes much later. The sense of touch in certain directions is the proper organ of control of the sense of sight. Hans Gross says: "Blows on the extremities are not felt as such but rather as pain, and blows



on the head are regularly estimated in terms of pain and falsely with regard to their strength. If they were powerful enough to cause unconsciousness they are said to have been very massive but if they have—that effect, they will be described by the most honest of witnesses as much more powerful than they actually were. Concerning the location of a wound in the back, on the side, even in the upper arms, the wounded person can give only general indications and if he correctly indicates the seat of the wound, he has learned it later but did not know it when it occurred. According to Helmholtz, practically all abdominal sensations are attributed to the anterior abdominal wall.”

(7) Sensations of temperature are influenced by previous condition. If one hand be immersed in cool water and another hand in hot water, and if subsequently the hands be thrust in some water of intermediate temperature, the water will feel warm to the former hand and cool to the latter.

§ 5. Each individual and each species have a peculiar odour of its own. The capacity to distinguish odours is more developed in men in savage conditions of life than in the civilised conditions of life. Some savage tribes by smell can track game and find enemies. It has been said that nursing infants have a peculiar sourish smell owing to the butyric acid of the milk while bottle-fed children smell like strong butter; that boys in puberty emit odour of animals in heat; that old age emits odour similar to dry leaves. Dr. George M. Gould and Dr. Walter L. Pyle say: “Priesmann in 1877 makes the statement that for six hours after coitus, there is a peculiar odour noticeable in the breath owing to the peculiar secretion of the buccal glands. He says that this odour is most perceptible in men of about thirty-five and can be discerned at a distance of from four to six feet. He also adds that this fact would be of great medico-legal value in the early arrest of those charged with rape. In this connection the analogy of the breath immediately after coitus to the odour of chloroform has been mentioned. The same article states that after coitus naturally foul breath becomes sweet” “Older observers confirmed by Doppner say that all the plague patients at Vaetliemka diffused an odour of honey. In diabetes, there is a marked odour of apples. The sweat in dysentery unmistakeably bears the odour of the dejecta. Bebur calls the odour of typhoid that of the blood

SEC. 5.  
Smell.



and Berard says that it attracts flies even before death. Typhus has a mouse-like odour, and the following diseases have at different times been described as having peculiar odours: measles the smell of freshly plucked feathers; scarlatina, of bread hot from the oven."

The hair has peculiar odour differing in individuals.

In what is called by Binet "fetichism," the subject shows a perverted taste for the odours of handkerchiefs, shoes, under-clothing, and other articles of raiment used by the opposite sex.

The sense of smell in man may be developed by attention and practice. By smell, a trained person can distinguish qualities of wines, drugs.

It is said that persons who have visited many lunatic asylums, recognise the same familiar odour of the insane; prisons, jails, work-houses, armies in camp, churches, schools and nearly every household are alleged to possess their characteristic odours. It is alleged that in the aggregation of large groups of the same class of men, the characteristic odours are recognised.

Olfactory illusion may result from expectation. In a case, officials smelled corpse while the coffin was being dug up, which was finally found to be empty.

SEC. 6.  
Taste.

§ 6. The sense of Taste becomes relevant in questions of poisoning, as to the taste of the poisoned food or drink. Prior taste and anticipation of a taste exercise influence upon perception of taste.

SEC. 7.  
Hearing.

§ 7. In the recollections of conversations, the particular words used may be forgotten but the general result is likely to be recollected. This general result should be treated as direct perception like other direct perceptions. The general effect of a conversation comes to the mind without any conscious inference. In recollecting scenes, places, objects, we may fail to recollect parts and particulars but the percept, the scene, the place, as a whole, may be recollected.

In hearing something, the meanings of the particular words do not often enter consciousness separately, and the consciousness often remains engrossed upon the meanings of whole sentences, regardless of the words used.

Of two persons who enter into certain understanding by use of language, each may forget the language used by him and

also used by the other party. Each may recollect *what he meant and what he then took the other to mean*. There may be error in grasping the meaning of the other and there may be error in conveying the meaning. Thus, two persons in good faith may misunderstand each other and each may charge the other for not sticking to his original word.

Wundt is of opinion that we locate powerful sounds in front of us and are generally better able to judge right and left than before and behind.

Sounds in front are often mistaken for sounds behind and felt to be higher than their natural head level.

Recognition of direction of sound is more difficult with one ear than with two ears.

Actual experimentation is necessary to determine power of hearing. Bezold examined a large number of human ears of different ages; he says that after the 50th year there is not only a successive decrease in the number of the approximately normal hearing but there is a successively growing increase in the degree of auditory limitation which the ear experiences with increasing age; that not one of 100 people over 50 years of age could understand conversational speech at a distance of 16 metres; that 10.5 percent understand it at a distance of 8 to 16 metres.

The hearing capacity of a witness when relevant in a case should be tested by actual experiment in the particular case.

Incorrect hearing is more frequent than incorrect seeing. Vision involves three dimensions and colour. The greater similarity of tones to each other is a cause of mistake.

The power of hearing varies and there are many persons of acute hearing. Witnesses relating to same conversations may sometimes differ owing to their differences in the power of hearing and owing to the respective places occupied by them during hearing. The laws of conduction of sound should be remembered. We hear distant noise by laying the ear close to the ground. Where a witness may mistake an echo for original sound and where echo can take place, the point would require enquiry what really happened.

The effect of a noisy day or noisy city during hearing and the effect of a still night or a still village during hearing or some such circumstance, require to be noticed. A judge must

hear the witnesses, and the parties and their pleaders correctly. The Judge should not sit at such a distance from witnesses or parties or pleaders as may cause incorrect hearing. A court should not be held by the side of a noisy street or at a place where the noise of outside may prevent correct hearing. Safeguarding a court from disturbance by noise is essential for proper administration of justice.

SEC. 8.  
Senses as  
organs of  
selection.

§ 8. From the infinite chaos of movements of the objective external world of perception each senseorgan selects certain motions and to these it responds ignoring the rest as if they did not exist.

SEC. 9.  
Absolute  
Sensibility.

§ 9. Objects around us would not become percepts of our consciousness, unless the external stimulus rises to a certain degree which is called "liminal intensity" of the stimulus, *i.e.*, the degree of stimulus necessary to produce the lowest degree of sensation.

*This liminal intensity of the external stimulus, determines the absolute sensibility of the mind to the particular kind of stimulus ; and this absolute sensibility differs (1) in different persons (2) in the same person on different occasions* In some abnormal conditions of the mind, this absolute sensibility may become very acute. The abnormal condition of acuteness is called hyperæsthesia.

In case of organs of sight and touch, different parts have different degrees of absolute sensitiveness.

There may be vibrations in air without sensation of sound, vibrations in ether without sensation of light. A thing may be upon our skin but its pressure or its weight may not be felt. A movement may take place but it may be too rapid for affecting our consciousness.

The movements of hands and fingers of a Juggler may be too rapid to be noticed by the spectators. One may detect a taste while another may fail to detect the same. One may feel a smell while another may fail to detect the same.

We have no nerves for perceiving all changes in nature. Only some of all the motions in nature affect our consciousness. 40,000 vibrations a second are the quickest air waves audible.

The absolute sensibility is conditioned by the condition of the bodily mechanism of sensibility. Constant circulation of blood is necessary for keeping the nervous mechanism in a state



of activity. Falling-off in the circulation of the blood brings down the sensibility. Every cause that enfeebles circulation of blood in the special end-organ of each sense and in the brain-centres thus affects sensibility. The local action of cold is to cause numbness; local want of sensibility may be caused by action of chloroform; in the first stage of local inflammation when capillary circulation is unduly active, an unusual susceptibility to pain is produced. During sleep, there is a falling off in the blood circulation in the brain and at that time ordinary sense impressions are not received.

During a fit of apoplexy or complete sleep of narcotic poisoning, there is complete stoppage of sensorial activity.

In the first stage of inflammation of brain, sensibility becomes exalted. The ordinary sensations seem one of unbearable violence.

§ 10. The weaker an existing sensation, the less would be the additional stimulus necessary for a feeling of difference; whereas the stronger an existing sensation, the greater would be the additional stimulus necessary for a feeling of difference. But sensations do not increase in proportion to the degree of the stimulation of the sense organs but more slowly.

SEC. 10.  
Relative  
sensibility

Professor Wundt says:—"However various may be their several delicacies of discrimination, this holds true of all, that the increase of the stimulus necessary to produce an increase of the sensation bears a constant ratio to the total stimulus. The figures which express this ratio in the several senses may be shown thus in tabular form:

Sensation of light ..	...	...	$\frac{1}{100}$
Muscular Sensation ..	...	...	$\frac{1}{17}$
Feeling of pressure	}...	...	$\frac{1}{8}$
Feeling of warmth			
Feeling of sound			

These figures are far from giving an accurate a measure as might be desired. But at least they are fit to convey a *general notion of the relative discriminative sensibility of the different senses.*"

A man while sitting in a room brilliantly illuminated with electric light hears the cry of "murder" in the street outside. He rushes out into the street dimly lighted by an oil lamp.

He sees a person running away with a revolver and another person wounded and groaning. This person may fail afterwards to identify the assailant whereas one coming out on that occasion from a dark room may identify the assailant. In coming out of a dark room, we may see even in moon light whereas in coming out of a brilliantly illuminated room we see darkness in a street having less illumination.

A warm day in the commencement of summer is more felt than a similar day at its end.

The stars are above us both in day time as well as in night. But in day time we do not see them. In a moonlit night we do not see the stars as we see them in a dark night.

During the day in a town, we can not hear many small sounds. But during the stillness of the night, the ticking of the clock, every sound in the house, the falling of footsteps in the house, the slight movement of any furniture or any door or any window in the house, are all felt. During a still night we may overhear the low subdued conversations of the next room. Sometimes when roused from sleep in the midnight when every thing is hushed in perfect stillness, our own heartbeats are the only sounds which meet our ears.

The low subdued conversations of thieves, robbers, secret lovers, conspirators, of forgers of currency notes, of coiners, of smugglers, may be overheard in a still night while thoroughly inaudible in day time.

Simultaneous and successive sensations modify each other. Each colour becomes more pleasant when combined with others in harmony; each note becomes sweeter when combined with others in harmony. A silver coin placed on the skin of the forehead was felt heavier when cold than when warm. The hue of colour not perceived owing to distance was perceived by sounding a tuning fork close to the ears of certain patients of Urbantschitsch. When one is suffering from pain, noise or light increases the same.

A person dressed in dark clothes but in full light may be perceived as wearing lighter clothes than one who wears light clothes in the shadow. In broad day light, one may be unable to see anything in a room from a place more brilliantly lighted whereas at night he may see inside a room lighted with artificial light

§ 11. Humboldt says that the Peruvian Indians in the darkest night can smell the approach of strangers while far distant and can say also whether he is a Negro or European or Indian. Tea-tasters and wine-tasters show much development in sensibility. Mongols of Northern Asia and Hottentots of Southern Africa show greater power of distant vision. The seaman can see "the loom of the land" when an ordinary landsman sees nothing.

SEC. 11.  
Acuteness  
of sensibility

Hellen keller lost in infancy her senses of sight and hearing, but she could understand speech by feeling the motions of lips and throat, and could identify persons by touching their hands.

§ 12. A study of mental life shows that the various ways of thinking and feeling have so grown as to be ordinarily useful in shaping our responses to the outerworld stimulations. The evolution works to make mind to adapt it for the well-being of the individual and the race. This teleological aspect of mental life finds support in the case of special development of particular senses when necessitated by the requirements of self preservation. The American hunter in the trackless forests can rightly determine his track by minute appearances in the trees ; he can determine the movements of friends and foes, by marks of their footsteps.

SEC. 12.  
Effect of  
endeavour  
of the or-  
ganism to  
secure its  
self preser-  
vation and  
self advance-  
ment, added  
to operation  
of habitual  
attention.

Increase in the receptive and discriminative power of one sense in the case of absence of another sense is probably partly the result of the endeavour of the organism to secure its self-preservation and self advancement and partly the result of the operation of habitual attention.

The blind Laura Dewey Bridgman who lost hearing, located the approach and the departure of people through sensation in her feet ; the cutaneous sense of vibration seemed to do the work of hearing. The deaf and blind Helen keller had her senses of taste and smell to a wonderful degree of acuteness, could be conscious of presence of another person in the room by odour alone. By placing her hands on the face of a visitor she could detect shades of emotion which the human eye could not distinguish. Placing the fingers of her hand on the throat of a singer, she was able to follow notes covering two octaves with her own voice and sing synchronously with her instructor. At the age of 19 months, Hellen keller became deaf dumb and blind. The blind scientist Saunderson lost his eyesight



in his first year. He could distinguish all of a collection of old Roman medals by their impressions; by the velocity he could tell the distance travelled in a vehicle.

The blind mathematician Mr. Saunderson, in a series of Roman medals, by his hand could distinguish the counterfeit from the true; he could perceive clouds passing over the sun while in the garden. One blind man by the sound of the horse's step in walking declared the horse to be blind. One blind man found out a horse to be blind of one eye by feeling the one eye to be colder than the other. Dr. Moyse though blind could distinguish a black dress of his friend by its smell. Two blind youngmen of Philadelphia could know when they approached a post in walking across a street by a peculiar sound which the ground under their feet emitted in the neighbourhood of the post.

SEC. 13.  
Relation of  
attention to  
Sensibility.

§. 13. (1) In the Hysterical condition, the patient's attention hovers over the bodily states; a trifling impression affects as very painful; the sense of hearing becomes very acute.

(2) By manipulation of attention we develop a habit to keep out sensations and also a habit to keep in sensations; these habits modify our sensibility. Those who are accustomed to noises become gradually almost unconscious of them. A regular frequenter gets accustomed to smell of the dissecting room or postmortem room.

(3) A sensation may neither be perceived nor remembered when consciousness is engrossed upon a train of thoughts. There can not be any consciousness unless we attend to a sensation.

(4) If the attention be concentrated on a particular kind of impression or impressions, the sensibility relating to these impressions is enhanced, but this diminishes or entirely takes away sensibility relating to other kinds of impressions for the time being. The light of attention may be thrown concentrated or in a diffusive form. When such light is concentrated on a stationary point, the surrounding parts become darker according to the degree of concentration. A man concentrated in a line of thoughts, may not notice persons entering or leaving his room; he may walk through a street without recognising his friends and acquaintances.

(5) Sensibility to pain ceases on diversion of attention. The painless operations performed by Dr. James Esdaile

through the help of hypnotism show how by diverting attention sensibility to pain can be taken away. The cases of quiet and tranquil self burning by Hindu Sati, the tranquil suffering of pain and death by martyrs are cases of diversion of attention.

§ 14. Increase of sensibility where there has been previous experience of similar nature, is in fact a case in which memory comes to aid present presentation. One can read easily a bad writing to which he is accustomed than the one to which he is not accustomed. Repetition of one sort of experience creates a disposition to respond to that experience easily. Every experience is aided by memory of similar experiences in the past. Quickness and accuracy of sense impression, are aided by the memory of similar experiences in the past. A paddy-grower having knowledge of the different sorts of paddy, in walking through a vast expanse of paddy cultivation, may recognise the different sorts on different lands, while a town-bred lawyer accompanying him may entirely fail to recognise the different qualities. A gardener may recognise in a landscape the different kinds of fruit-bearing trees, while a cockney will only carry the æsthetic effect of the beautiful landscape. A dealer in furnitures by a glance into a room containing many kinds of furnitures will be able to tell the different kinds of furnitures he saw in the room ; while a person who is not accustomed to different kinds of furnitures, may be unable to give a description after a glance. Senses require to be trained by regular and systematic use in early years of life. Persons accustomed to book-learning from childhood to the neglect of senses, may have very bad sensibility. Every sense helped by a large and manifold memory of sense-experiences of the particular sense, is more sensitive than one without such experience.

SEC. 14.  
Effect of  
Memory on  
Sensibility.

## CHAPTER IX.

### PERCEPTION.

SEC. I.  
Perception.

§. i The psychology of perception becomes relevant in the administration of law, for the following reasons :

- (1) Perceptual inference may be false.
- (2) There may be perceptual illusion.
- (3) There may be perceptual hallucination. Sensations reveal to us the existence of external things ; different sensations correspond to the different qualities in the things, which produce them. The qualities of the different objects are according to the sensations they produce.

The popular mind takes the sensations as qualities themselves of things and not as effects of those qualities, The popular mind thinks colour as actually belonging to the external object. Like popular localisation of sound and colour, in the extra-organic world, touch sensation is localised at the point of organism touched.

The secondary qualities of matter are really states of our own consciousness, objectified and localised in things ; in the things are the attributes which produce them ; the localisation is the result of the operation of a law of mind—under which the mind thinks of sensations as situated at the place where the causes of the sensations lie.

The popular science has relegated the secondary qualities (taste, smell, colour, temperature) to states of consciousness and takes only the primary qualities (extension, weight, impenetrability & c.,) as objective real qualities of things and that they are perceived just as they are in the world of objective reality.

It is unnecessary to discuss here the ultimate metaphysical nature of the primary qualities. The primary qualities show such a permanency of relationship in their appearances as is sufficient for guiding our conduct in relation to metaphysical reality, if these primary qualities be not the metaphysical realities themselves.



Extensibility is the invariable attribute of all external appearances and maintains a constant and fixed relationship; therefore the principle of superposition can be used in all our measurements of space. Weight is based on the law of gravitation which is a universal law.

The existence of not-self is a matter of direct experience, revealed in the same process which reveals the self; but our concrete perceptual knowledge of not-self is the result of the action of self and not-self.

In the evolution of Perceptual concrete knowledge, the mind by its selective activity chooses some of the sensations of a Percept as representing truly the objective nature of the thing and takes the rest as mere appearances modified by the conditions and circumstances of the occasion. The question how far this selective activity leads to metaphysical ontological truth is a problem of metaphysics.

Pure sensation is an abstraction never realised in adult life by itself. We get pure sensation in adult life by ideal analysis from a percept.

*Perception is the consciousness of particular materials things.* The actual present sensations give the presentative factors and they rouse up memories of other sensations. The remembered sensations may be poorer or richer. More or less actual revival in consciousness of representative elements is according to direction of attention or practical requirement of the moment. As we are accustomed to use language and all things have got names, the name associated with a percept may some times tend to fill the consciousness with the presentative elements, without much revival of representative elements.

Perception being an automatic instantaneous cognition involving presentative and representative factors, *the representative sensory factors* strictly belong to perception. But *other representative factors involving all our knowledge* relating to the object run into the cognitive act of perception. J. Royce says: "our present conscious perception of any object which impresses our sensory organs is a sort of brief abstract and epitome of our previous experience in connection with such subjects."

§ 2. In objective nature, the individual plants and animals are living organic unities. Each such life represents the opera-

SEC. 2.  
Perceptual  
individuals,

tion and control by an unifying organic principle. The controlling type of each species shows the operation of a certain law of uniform coexistences, successions and dependence.

In the non-living world, each of the chemical elements has a certain objective individuality, the element considered generally. Similarly each of physical substances considered generally shows a certain objective individuality. But when non-living objective nature is looked as a mass of particular individual percepts and not considered relating to general laws operating there which are at the basis of chemical elements &c. individualisation is an ideal one—the creation of the Human Mind, according to our necessities, utilities and purposes. Such individuals as a table, a chair, a bench, a house, a garden, a city, a village, a book, a road, an estate, a mouza, a forest, a pasture, a fishery, are ideal creations of the Human Mind. Two separate properties may be actually created relating to adjoining lands without actually defining the full boundary owing to imperfect ways of human conduct; in such a case afterwards during dispute by compromise or by court's decision the full boundary may become defined. In language we find a store house of ideal individuals created by the Human mind and in learning language the child comes to accept these as individuals.

SEC. 3.  
Percep-  
tions as judg-  
ments.

§ 3. Perceptions of individual things are always acts of judgments, though the judgments are spontaneous, automatic and subconscious. Mistakes in these judgments lead to mistakes in the percepts.

Perception is an intellectual process which comes into play on production of sensation or sensations through organs of sense leading to what appears as direct immediate knowledge of the things of the external world, their qualities and the relations, the intellectual process being spontaneous, automatic and subconscious. The knowledge involves (1) a knowledge of external reality (2) of what it is. Knowledge of not—self considered generally and in abstract, is intuitive and direct but knowledge of the contents of this world is the result of experience.

Every perception involves idea of identity, that is, recognition. Recognition implies revival of a past memory, and assimilation of the present experience to the same,

Two different kinds of inferences are involved in a percept :

(1) When I see my table before me, but away from me I get only certain visual sensations. These are the only presentative elements. I believe that this table has certain other qualities which may produce certain tactual and muscular sensations.

(2) I also believe that this table is the identical table which belongs to me.

It may be that my table has been removed without my knowledge and my habitual expectation to find the table there with some accidental abnormal condition of the mind is producing only a hallucination of a visual percept of a table. Although such a possibility is not ordinarily probable yet it may happen ; and when it happens, all my beliefs aforesaid would be false.

In the perception of similarity, the two things are believed to be separate ; in the perception of identity, the two percepts are believed to be of the same thing. In nature, two individuals are never completely similar ; but the same individual again never remains completely similar in every part of time. Identity is inferred through perception of such similarity as is a sufficient basis for holding that nature has not a second individual having all these similar points. This judgment involves an implied belief in an objective fact of nature and is an automatic spontaneous judgment, though it may mislead. The perception of identity always rests upon the work of the subconscious mind.

Every identification involves a judgment ; it is a relational process and means connection with a past experience. The extent of this past experience relating to an individual, may vary greatly in different minds.

In identification of a person before a Judge or any officer of court or at any public office, a question may be raised as to the nature of the previous knowledge of the identifier about the person identified, What sort of previous knowledge of the individual, the identifier shall possess before he can properly identify ? whether the nature of this previous knowledge should be different according to the nature of the transaction in which the identification is made ?

A person who calls himself Mr. Abdullah came and stopped in a Calcutta hotel on several occasions during the course of two years. After these two years, he executes a registered Will in Calcutta, describing himself as a son of Mobarak Hossain



of village X of district Mymensingh in Bengal and requests the hotel keeper to identify him. The hotel keeper identifies him in the registration office and the will is kept in the custody of a Calcutta attorney. The hotel-keeper had never been to the district of Mymensingh and knows nothing about Mr. Abdullah than what he heard from him. Subsequently, the executor mentioned in the will mentioning death of Mr. Abdullah applies for probate of the will. The heirs of Mr. Abdullah deceased of village X aforesaid plead that Mr. Abdullah did not execute the will. No photograph of the Mr. Abdullah deceased is available to show whether the person whom the hotel keeper identified as Mr. Abdullah is the real Mr. Abdullah deceased. The witnesses and the attorney knew not Mr. Abdullah before. In a case like this, it may be that the real Mr. Abdullah executed the will or another person by taking his name executed the will. The fate of the case would depend upon the nature of the evidence. A question may arise whether in this imaginary case the hotel-keeper was justified in making the identification. It may be that instead of identification by the hotel-keeper, Mr. Abdullah was identified by the attorney himself. The attorney picked up acquaintance with Mr. Abdullah at the hotel and saw him there on several occasions, and had no further information about his identity. The question may be raised whether the attorney was or was not justified in identifying Mr. Abdullah in the registration of the will.

No hard and fast rule can be laid down as to the amount of previous experience about an individual necessary for identification of him. The amount and nature of previous experience would depend upon the nature of the occasion when identification is made. A suggested standard may be that a legal practitioner would be justified in identifying an individual on such previous knowledge of the individual, on which he would act in any question of his private interest according to the nature of the occasion.

SEC. 4.  
Primary  
and second  
ary qua-  
lities.

§ 4. Primary qualities (extension, impenetrability divisibility) are qualities which make matter. They are learnt by tactuo-muscular experience.

Secondary or nonessential qualities may be thought present or absent, appear different to different persons. They

are variable qualities ; colours, sounds, smell, temperature, tastes are secondary qualities.

§ 5. Vision gives *no direct perception* of impenetrability, depth or distance from self, solidity, resistance, weight ; vision perceives these things by *inference*. SEC 5.  
Vision.

In visual percept of a thing, the eye sees colour, light and shade, surface outline, apparent magnitude. From these, inferences are made. The inferences ordinarily seem in most cases like intuitions, but explicit inferences are sometimes made.

The world first appears as a coloured shaded flat surface close to the eye in the vision of persons who were born blind and who afterwards obtain vision.

§ 6. Distance is inferred from the following :

(1) Muscle-feelings in increasing and diminishing the convexity of the crystalline lens in focussing light on the yellow spot of the retina from distant objects. SEC 6.  
The visual symbols for inferring distance.

(2) Muscle-feeling from the convergence of the two eyes in binocular vision.

(3) The greater or less differences of the two retinal pictures of the two retinas, which merge into one picture in consciousness.

(4) Clearness or dimness of the object in outline and in detail. Judgments based on clearness or dimness may become wrong owing to the state of the atmosphere.

In stereoscope, flat pictures produce the same effects upon the eye as real solid distant objects do.

Visual signs of near objects are :

- (1) Difference in the retinal pictures.
- (2) Effort in combining them.
- (3) Muscle-feeling of the convergence of the axes.

Visual signs of distant objects are :

(1) The impressions by which the perspectives are shown in pictures.

(2) The apparent convergence of the lines and sides of things known to be parallel.

(3) Differences of light and shade.

§ 7. Retinal magnitude differs according to nearness or distance of the object. Retinal magnitude is determined by the amount of ocular movement needed to bring the opposite ends SEC. 7  
Visual magnitude.

of the object to the centre of direct vision and in following their peripheral lines.

The Real Magnitude is determined by tactuo-muscular sensibility or by Active Touch. By visual signs, real magnitudes can be known only when real distances are known. When real distance is known, real magnitude can be inferred from the apparent magnitude. In vision, illusions as to distance cause illusions as to magnitude.

SEC. 8.  
Up and  
Down.

§ 8. Real up and Real down are determined by tactuo-muscular sensibility. Vision only supplies symbolic language for inferring real up and real down.

SEC. 9.  
Distance.

§ 9. Perception of real distance takes place directly through Touch and muscular-feeling, by the application of the principle of superposition. A part of body first becomes the standard of measure, through the principle of superposition. Afterwards, artificial standards were developed. This distance is a relational thing determined by the relation of a certain standard length to other length to be measured. Actual measurement is the way of finding distance. Through mathematical reasoning from one measured length the measurement of another length can be inferred. The eye merely makes an inference in speaking of real distance; the correctness of the inference depends upon the nature of the distance and the previous experience of the person who judges distance by the eye.

Witnesses are often asked to speak about distances or areas, never measured by them. The value of such evidence depends upon the nature of the distance or the area and the previous experience and training of the witness.

SEC. 10.  
Professor  
James on  
vision's  
capacity  
about the  
third dimen-  
sion of  
space.

§ 10. Professor James does not accept the view that vision can not give third dimension of space. He holds that all sensations have volume and that the seen distance is a genuine optical feeling. He admits that the measurement of distance is, as Berkely said, a result of suggestion and experience but he says that visual experience alone is adequate to produce it. But Professor James says this: "Touch space is one world; sight space is another world."

The two worlds have no essential or intrinsic congruence and only through "association of ideas" do we know what a seen object signifies in terms of touch." "Persons with congenital cataracts relieved by surgical aid, whose world until



the operation, has been a world of tangibles exclusively, are ludicrously unable at first to name any of the objects which newly fall upon their eye." "Neither do such patients have any accurate notion in motor terms of the relative distances of things from their eyes. All such confusions very quickly disappear with practice and the novel optical sensations translate themselves into the familiar language of touch."

§ 11. Indirect knowledge of distant objects are obtained by the blind sometimes by motions of air or motions of sound acting upon touch or ear. This indirect knowledge is inferential knowledge, though inference may be automatic, sub-conscious apparently immediate.

SEC. 11  
Indirect  
knowledge  
of distant  
objects by  
the blind.

§ 12. Presentative sound sensations may give us automatically perceptual knowledge of the objects producing the sounds, and also knowledge of the distance of the objects, in the following ways :—

SEC. 12.  
Sound  
(Hearing.)

(1) Different qualities of sound may become associated with different objects. From the sound it may be inferred whether it proceeds from a dog or a cat.

(2) Different degrees of sound become associated with the different distances of the surrounding objects.

(3) Direction of object may be inferred from sound. The intensity and clearness of sound change according as it falls directly or obliquely upon the ear. The sound is clearest when it reaches directly to the ear; it is least clear when it enters the ear opposite to the sounding object. According to the position of the head in relation to the sounding object, a difference in the quality of the sound takes place.

§ 13. Feelings of taste and smell become also signs leading to perceptions of things but the process is one of sub-conscious inference.

SEC. 13.  
Taste and  
Smell.

§ 14. Of every object, we take a certain visual shape as the real shape. Every object when seen from different places along the same line give different perspectives. Of these different perspectives one is selected as the visual image of the object to be thought as really representing the object.

SEC. 14.  
Real visual  
shape and  
magnitude.

Of the several visual magnitudes of each object, one is selected as real as determined by our practical and æsthetic interests.

SEC. 15.  
Continuous  
perception  
of a point.

§ 15. A point seen for a considerable time may disappear from perception. Helmholtz has shown how difficult it is to keep to a point in vision for only 10 or 20 minutes.

Helmholtz says that weakly objective images disappear like a wet spot on a warm day, at the moment a single point is fixed. This explains sudden disappearance of an object at night. According to Helmholtz, the power of the full moon is not more than that of a candle 12 feet away.

SEC. 16.  
Perception  
in dim light  
or in dark-  
ness.

§ 16. Dr. Vincent says that a man may be recognised during the first quarter of the moon at from 2 to 6 metres ; at full moon at from 7 to 10 metres ; at the brightest full moon, an intimate may be recognised at from 15 to 16 metres. (One metre equals forty inches). Habit may increase visual power in darkness. The longer you are in darkness, the more you see. Aubert could read books in a dark room where others had to feel their way. Differences in vision in dark of witnesses, can be best determined by actual experiment.

SEC. 17.  
Differences  
in Percep-  
tive power.

§ 17. Perceptive power varies with the skill of the individual. Within the sametime, one perceives little and generally the least important, whereas another may perceive everything and can distinguish the important from the unimportant. Two such persons will give different descriptions of the same matter.

SEC. 18.  
Prepercep-  
tion.

§ 18. In our attention on the occasion of a sensation an idea of the expected experience comes to the help. This ideal element increases rapidity and clearness of perception.

But this ideal representative element may mislead when the presentative impressions do not sufficiently enter consciousness. In the dark, a rope may be mistaken for a snake.

Wundt says ; "Illuminate a drawing by electric sparks separated by considerable intervals, and after the first and often after the second and third spark, hardly any thing will be recognized. But the confused image is held fast in memory ; each successive illumination completes it ; and so at last we attain to a clearer perception."

The ideal element varies with the nature of our expectation and comes to play in every ordinary perception.

Professor James says : "Every stir in the wood is for the hunter his game ; for the fugitive his pursuers. Every bonnet in the street is momentarily taken by the lover to enshroud the

head of his idol. The image in the mind is the attention; the preperception is half of the perception of the looked-for-thing. It is for this reason that men have no eyes but for those aspects of things which they have already been taught to discern," "In short, the only things which we commonly see are those which we preperceive and the only things which we preperceive are those which have been labelled for us and the labels stamped into our mind. If we lost our stock of labels, we should be intellectually lost in the midst of the world."

§ 19. Different witnesses observing the same objective phenomenon may have divergent sense perceptions owing to the following causes :—

- (1) Differences in absolute sensibility.
- (2) Differences in Relative or Discriminative sensibility.
- (3) Differences in the nature of attention given owing to difference in the selective activity of the mind.

SEC. 19.  
Difference in the mental record of sense perceptions relating to identical objective phenomenon.

- (4) Differences in the trained capacity to observe.
- (5) Differences in their expectation about the nature of perception to be had i. e., differences in preperception.

(6) In many of our percepts of things, we are not separately conscious of the separate parts. The particular minute impressions which give rise to percept may not all enter consciousness; in the conscious percept, the combination of the minute parts may be of different groups in the case of different persons. In this combination, representative elements enter which may be different in the case of different persons.

§ 20. There can be an instantaneous photograph of an objective phenomenon. But the instantaneous impression produced upon the sense organ must be carried to the brain and should enter consciousness before a perception can be produced. All sense impressions do not reach perceptual consciousness. The impression must be strong enough to pass beyond the threshold of consciousness and a certain time is requisite for reaction of the mind, without which there can be no perception.

SEC. 20.  
Impression and perception.

In an act of perception, the minute parts may not enter consciousness, when the total effect is in consciousness. We can see and enjoy a whole landscape without being conscious of the parts separately or without being able to recollect the parts afterwards.



There may be sense impressions which do not produce perception owing to diversion of attention but immediately after on turning of attention, there may be recollection of actual perceptions which never took place but would have taken place had there been no diversion of attention on the occasion of the sensations.

An action may be quicker than perceptions of some persons present, and these persons may not perceive. In the murder of President Carnot, there were three gentlemen in the same carriage which carried the President, two grooms stood behind and mounted officers were on either side. None of them saw the President stabbed, although the murderer had jumped upon the footrest of the carriage, pushed aside Carnot's arm and thrust the dagger into his abdomen.

SEC. 21.  
The effect  
of emotion  
on percep-  
tion.

§ 21. Emotions so far they excite interest and do not stupefy the perceptive mind make perceptions to be more observed. Fear may rouse up the whole nature and the instinct of self preservation may make every power more alert, attentive; but on the otherhand, it may paralyse the mind. Similarly anger in a light form may make perception keen but in a violent form may make perception blind.

SEC. 22.  
Some  
Illusions of  
sight

§ 22. Position of lines influences the estimation of size. Perpendicular dimensions seem to be somewhat greater than what they are. Of two crossed lines of the same length, the vertical one seems longer. Inclinations which appear from a distance to be so precipitous as to be impossible for moving on them, appear otherwise on actual arrival there. Look at a hill from a distance and actually climb it. The same room when unfurnished looks smaller than when it is a furnished one. Distance, size, colour appear one thing in foggy atmosphere, and another thing in clear atmosphere. What appears a small parcel of land when unoccupied by any building, seems a big place when occupied by a building of several stories with many rooms. Many witnesses often depose about size, dimension, length, distance of objects as seen through their eyes. Any evidence based on optical illusion should be discriminated.

Some cases of sight-illusions are mentioned here :

(1) Fata Morgana.

(2) A straight stick seen bent in water.

- (3) The doubling of an object seen through prism.
- (4) The apparent movement of sun round the earth.
- (5) The apparent sinking down of the earth observed by balloonists.

(6) The flying past of trees and telegraph posts and the rhythmic rising and sinking of telegraph wires during a railway journey.

(7) The alteration in the size of the moon according to its position in the sky.

(8) The apparent smallness of houses near the line, seen out of a passing train.

(9) The pigmy size of the people looked down from a very high place.

(10) Take two straight lines of equal length ; from each end of one draw a short line at an acute angle. From each end of the other, a similar line at an obtuse angle. The second straight line will then appear longer than the first.

§ 23. Hallucination is the result of disturbance in the brain centre or of the sensory organs, there being presentative sensations without any object of the external world to rouse the same. Hallucination is a percept without any objective reality corresponding to it.

SEC. 23.  
Hallucina-  
tions and  
Illusions, in  
Perception.

Illusions are the result of mistakes not in the presentative elements in a percept but the result of improper working of the automatic inference or suggestion or associative revival which bring in memories not agreeing with the objects.

Incomplete hallucination, it is believed for the time being as an objective reality in the absence of a real objective reality.

According to Mr. Binet, in perception, illusion as well as hallucination, the sensational vividness is obtained by a current from the peripheral nerves ; according to him the feeling of objective reality can only come from peripheral senseorgans. Hallucinations can however be also centrally initiated. Subjectively there is no difference between a Perception and a Hallucination. Hallucinations have no objective reality. If there are veridical hallucinations as alleged, then they represent some action of other mind or real incident of nature.

Hallucinations may be of all our senses :

Sight, touch, hearing, smell, muscular feeling, temperature. The extensive human experience of sensory manifestations of

imaginary ghosts, spirits and gods, shows to what extent man is subject to illusions and hallucinations. It is unnecessary to say here whether any sensory manifestation is due to action of any real ghost or any real spirit or any real god and whether such beings really exist.

The census of hallucinations taken shows its extensive prevalence among normal persons. Dreams are only hallucinations in the partially awake state in sleep. Hallucinations and Illusions can be easily produced by suggestion in hypnotic condition.

Situations arise in ordinary life when we remain in a semi-hypnotised condition.

Mental Image involves some sort of excitation of the sensorial and motor elements involved in the original perception. Every image of sensory perception contains the germ of a hallucination. Every image involves a faint momentary passing belief in the reality of its object. This belief may develop and the nervous excitation of sensory perception may be completed; and then a hallucination is obtained. This development takes place in dreams and hypnotised condition.

SEC. 24.  
Objective  
factor in  
illusion,

§ 24. There may be something in the impression caused by the presentative element, as to lead the mind in the wrong track. There are some illusions which can be cured by experience and which arise because the present presentative element is habitually or inveterately or probably joined to the elements suggested.

(1) In putting a small object between the crossed fingers the small object seems double.

(2) The impression of solidity produced by two flat pictures in a stereoscope.

(3) Retinal movement feeling leads to percept of movement. If after whirling one stands still, there is the illusion of objects whirling, the retinal movement feeling being referred to the objects.

(4) If one sits at the window of a carriage in a stationary train, and another train by the side filling the entire window after remaining stationary, moves away, one feels the 1st stationary train as moving.

(5) One looking from a moving train window, sees near stationary things visible through the window as moving in the opposite direction.



(6) In a train, the faster it travels, the nearer many way-side objects seem ; and the nearer they seem, the smaller do they look.

(7) Where the external stimulus produces a vague indefinite effect, the mind may bring in wrong memories to complete percepts ; and thus illusions arise. Something indefinite seen in a fog may be taken as a horse or a man.

§ 25. The mind may be in a particular state which takes it in the wrong track. These are the result of wrong associative revivals owing to wrong preperception. SEC. 25.  
Subjective  
factor in  
illusion.

(1) Any sensation causing illusory percept of a ghost to one who believes it and expects it.

(2) Any sensation causing illusory percept of a thief when thefts are frequent.

(3) Any sensation causing illusory percept of a pursuer to a guilty person expecting pursuers.

(4) Any sensation causing illusory percept of a friend or lover expected.

(5) In rapid reading, only some of the letters are seen and by memory revivals according to expectation, the rest are filled. In cases where a Judge has to rely upon his own endeavours to determine the contents of documentary evidence, he may make mistakes where he can not afford to give too much time. The best course is to induce pleaders of both parties to go through documentary evidence very carefully.

(6) In the hearing of ordinary speech, a very substantial portion is often supplied by the hearer ; and this from subjective expectation, may lead to hearing of what was not said. A familiar well-known language is, therefore, understood even when spoken lowly or half uttered or from a distance. An unfamiliar language may be unintelligible under these conditions. Too much hurry in recording deposition should be avoided where practicable. Ordinarily many witnesses are reluctant to give full language of their answers ; the filling up of the rest of language by the Judge may in some cases lead to mistake. A Judge in extreme hurry may not even hear the whole of what witnesses say and may fill a portion from his own mind. The check used by reading over evidence is not in many cases of much value. Many witnesses become inattentive and do not attend properly to what is read over. Again, many do not

care to follow intelligently the meanings and significance of what is read over.

(7) Illusions about personal identity are often the result of subjective factor. The attitude of the subjective mind may induce one to pass from slight similarity to identity. Prof. James says:—"A man has witnessed a rapid crime or accident and carries away his mental image. Later he is confronted by a prisoner whom he forth with perceives in the light of that image and recognizes or identifies as the criminal although he may never have been near the spot."

Sir Robert Anderson in his "criminals and crime" gives the following personal experience: "Being detained in London by official business far on into the summer, I took rooms at Norwood. Arriving late one night at Crystal Palace station, I made for my lodgings "at the double." I soon discovered that I was being pursued by a constable. Two ladies who had travelled in the same train accused me of having grossly insulted them. I returned to the station and there *my accusers identified me as the delinquent*, but absolutely refused to prosecute the charge. *They were in such an hysterical condition, indeed, that they could scarcely be induced to look at me at all.* As I had travelled in a compartment by myself, there was only my word against theirs; and if they had pressed the charge I do not see how I could have escaped. In any case, my position was a perilous and painful one; and but that a happy accident enabled me to put the police upon the track of the real offender, the stigma of the accusation might have rested on me to the present hour."

(8) The subjective factor which causes illusion, may be the result of the spontaneous state of the mind of the observer or the mind might have been influenced by external suggestion. A person may make wrong identification bonafide under the suggestion of any person in authority above him or suggestion of any person whom he habitually obeys or reveres. The external suggestion may be by another mind or by circumstances, which latter case is a case of influence of objective factor in the production of illusion. A person whom circumstances suggest to have been the thief, may be wrongly identified as thief bonafide by a person who saw momentarily the thief during theft.



§ 26. (1) In hearing another person, owing to defect of aural mechanism or owing to improper attention, or owing to all the words not having reached consciousness from some cause, added to working of mind in supplying words not actually heard, the correct words used may not be rightly perceived.

SEC. 26.  
Mistakes in  
auditory  
perception  
of language.

(2) There may be misunderstanding relating to the meanings of words and sentences actually used.

§ 27. (1) A positive hallucination is subjective perception of an object which does not exist. (2) A negative hallucination is non-perception of an object which exists.

SEC. 27.  
Different  
kinds of  
hallucina-  
tion.

§ 28. Hallucinations and Illusions are fallacious perceptions. A false perception is a perception in the state of dissociation. Illusions and Hallucinations are the result of dissociation. Dissociation takes place in two ways:—(1) falling off of associated elements which should have come up. (2) Coming in of elements associated to some other percept, but which becoming disintegrated from that, wrongly comes up as associated with a presentative element with which it is not associated.

SEC. 28.  
Causes of  
illusions and  
Hallucina-  
tion.

Image involves complete memory or a combination of partial memories of sensuous Percepts—involves activity of the same tract of the nervous system, as in sensuous percepts. Every image tends to create a belief into its objective truth *i. e.* to develop into a percept; this tendency is normally checked by the controlling effect of the systematised and correlated mass of our experiences and of the perceptual presentative experiences. These prevent an image to develop into a percept.

When, however, the associated links fail and images become dissociated and cease to be apperceived through our awareness of the real objective world of existence conscious or subconscious, and when the perceptual presentative experience ceases to exercise the necessary control, image develops to a percept, and we get a hallucination.

Hallucinations normally happen in normal persons in the partial wakefulness of sleep when dreams happen, in transitions from sleep to wakefulness and from wakefulness to sleep, in hypnotic conditions and conditions resembling partially hypnotic state. These are occasions when the light



of presentative partial consciousness has faded or is extinct and the memory of the organised and correlated experience of objective material world has been more or less, made dormant. Dissociation or obstructed association in consciousness is a sort of breaking up of organic mental life; it is a sort of disorganization. This disorganization may be of various degrees and kinds. In normal persons, a part of the mind-organisation more or less, becomes inactive during sleep. It is a temporary natural stopping of a part of the mental machinery. In mental diseases, a part of this mental machinery may be temporarily or permanently destroyed.

A dissociation or obstructed association creates a sort of water-tight chamber where the free waters of the result of human experience and of working of human mind, can not flow from other parts.

Dr. Morton Prince says:—"Dissociation is a function of the normal mechanism of the mind and nervous system and is made use of in normal life for the adaptation of the individual to the constant and a ceaseless changes of the environment. It is the enormous exaggeration and perversion of this dissociating mechanism that constitutes abnormality."

Recollections under the law of contiguous association mean mechanical repetition. But in revivals through similarity and contrast, in intellectual integration and assimilation, dissociation or disintegration or differentiation or analysis of previous experience is implied. When this dissociation makes knowledge to stray from objective reality or when it leads behaviour astray from the ideal demanded by society without being a step in advance, the dissociation becomes a disease.

SEC. 29.  
Some circumstances  
when Hallucinations  
may happen  
in normal  
persons.

§ 29. (1) Local Disease of an organ of sense.

(2) Morbid emotional condition. Persons in great danger may have hallucination. Love-smitten persons may have hallucination.

(3) Deep mental or bodily exhaustion. Loss of blood may give rise to hallucination.

(4) In the transition-states from sleep to wakefulness, from wakefulness to sleep.

(5) In partial sleep (not dreamless sleep)

(6) Hunger may give rise to hallucinations.

(7) Hallucinations may be induced by suggestion in hypnotised condition.

(8) Result of some poisons in the mind is to produce hallucinations. When the excretory system is not working properly as in constipation, a person may get hallucination.

§ 30. Mental Fatigue means a falling-of in the working capacity and that the organism requires rest for regaining of normal working capacity. Mental fatigue arises from Mental work. But extreme bodily fatigue produces in the mind a condition like "Mental fatigue." During "mental fatigue" mistakes take place in perception, in memory, and in judgment. Many cases of neurasthenia are the result of constant and excessive fatigue. A witness appearing to depose in the witness-box after an awfully fatiguing journey should take rest before deposing. An officer after a fatiguing long journey into the interior should take some rest before beginning an work of investigation if he wants to carry to it his full mental efficiency.

SEC 30  
Mental  
Fatigue.

Hans Gross says:—"A witness who has been subjected to a prolonged and fatiguing examination falls into a similar condition and knows at the end much less than at the beginning. Finally, he altogether misunderstands the questions put to him. The situation becomes still worse when the defendant has been so subjected to examination and becomes involved because of the fatigue etc., in the famous "contradictions." If "convincing contradictions" occur at the end of the long examination of a witness or a defendant, it is well to find out how long the examination took. If it took much time the contradictions mean little" "The same phenomena of fatigue may even lead to suspicion of negligence. Doctors, trained nurses, nursery maids, young mothers etc. who become guilty of negligence of invalids and children have in many instances merely misunderstood because of great fatigue. It is for this reason that the numerous sad cases occur in which machine-tenders, switch-tenders etc. are punished for negligence. If a man of this class, year after year, serves 23 hours, then rests seven hours, then serves 23 hours again *etc*, he is inevitably overtaken by *fatigue and nervous relaxation in which signals, warnings, calls etc. are simply misunderstood* Statistics tend to show that the largest number of accidents occur at the end of a period of service *i. e.*, at the time of



greatest fatigue. But even if this were not the case, some reference should be made to chronic fatigue. \* \* \* The most responsible positions are occupied by chronically fatigued individuals, and when nature extorts her rights we punish helpless men " "The case is the same with people who have much to do with money—tax, post, bank, and treasury officials, who are obliged to attend rigorously to monotonous work—the reception and distribution of money, easily grow tired. Men of experience in this profession have assured me that they often, when fatigued, take money, count it sign a receipt, and then return the money to the person who brought it."

Fatigue produces a sort of hypnotised condition when the full mind ceases to work. Any suggestion from within or from without or from any external object may work itself out. In fatigue, the mind tends to become dissociated. The whole experience tends to stop exercising its corrective influence. Sensibility is diminished in fatigue. The mechanical motor habits tend to lose control more and more. *In a state of fatigue, sensation instead of developing correct perception, may cause illusion*; there may be illusion of memory also, Mind's capacity of new response to altered circumstances diminishes and may even practically vanish. When a witness is overpoweringly fatigued in mind, a pleader cross-examining him, may sometimes make him say anything by putting leading questions which work like suggestions to a hypnotised person. Persons who feel highly nervous under their situation at court's witness-box and also persons who are not accustomed to intellectual work, become sooner tired than other persons, other circumstances being equal.

SEC. 31.  
Morbid  
emotion  
may cause a  
hallucination of  
feeling.

§ 31. Th. Ribot says:—"Bennet relates that a butcher remained hanging by one arm from a hook. He was taken down by the terrified bystanders, uttered frightful cries and complained that he was suffering cruelly, while all the time the hook had only penetrated his clothes and the arm was uninjured."

A servant at Bankipore killed a snake; superstition that he would be bitten by the consort of the snake, filled him with terror. This emotion, next day, produced in him the hallucinations of being bitten by the consort and actual physical sufferings. He had to be taken to the hospital subsequently it was found out that he had not been bitten at all,



§ 32. We can observe better a scene of which we had previous experience than one which we see for the first time. The memory of the former experience is revived and coalesces with the new impression and thus improves the perception. This ideal element in all perception is very valuable for careful observation of all particulars and for better revival of the same. But if the wrong ideal element comes up, it may lead astray and cause illusion. But the value of previous experience is diminished when novelty is lessened. Novelty rouses interest and attention and thus keens the sensibility. We understand a book better when we read it for the second time than when we read it on the first occasion. Henry Bergson says :—"The birth of a dream is no mystery. It resembles the birth of all our perceptions. The mechanism of the dream is the same in general as that of normal perception. When we perceive a real object what we actually see—the sensible matter of our perception—is very little in comparison with what our memory adds to it. When you read a book, when you look through your newspaper, do you suppose all the printed letters really come to your consciousness? In that case the whole day would hardly be long enough for you to read a paper. The truth is that you see in each word and even in each member of a phrase only some letters or even some characteristic marks, just enough to permit you to divine the rest. All of the rest that you think you see, you really give yourself as an hallucination."

SEC. 32.  
Value of  
previous  
experience  
on correct  
observation.

## CHAPTER X.

### MEMORY.

SEC. 1.  
Importance  
of the study  
of Memory  
by the jurist.

§ 1. Memory is the great living record-room where the Jurist is compelled to go in securing evidence for decision of disputes. The Human mind records the evidence and reproduces the same when required. Study of the laws and conditions of retention (study of statical Memory) and of the laws and conditions of revival in the present consciousness at time of deposition (*i. e.* study of dynamical Memory) is extremely necessary for securing good evidence and estimating value of evidence. In study of Memory, facts which help to understand witness-mind, Judge's mind, litigant's mind, are to be found.

The function of memory in every case of judgment is to bring the influence of the whole past experience in whatever form relevant for the judgment. Memory is like a pyramid whose apex is always in our present consciousness for the moment, whereas its base is hidden in past experience ; this memory of past experience which is related to the apex of present experience always changing with change in the requirements of the present consciousness. When the whole of past experience rationally relevant to the present one properly operates, the memory is functioning properly ; but this is only an ideal.

SEC. 2.  
Forms of  
Memory.

- § 2. (1) Organic memory.  
(2) Subconscious memory.  
(3) Conscious intellectual memory.  
(a) Involuntary and spontaneous.  
(b) Voluntary.

SEC. 3.  
Organic  
Memory.

§ 3. All bodily aptitudes and dexterities are the result of organic memory or organic retention, leading to the formation of proper motor associations.

The different organs of the human body more or less utilise the experience and show by their subsequent conduct

that the experience has not been in vain but is as it were remembered in the subsequent conduct of the organism.

Organism remembers as it were the processes that are to be performed when we perform those processes consciously and voluntarily; finally they come to be performed subconsciously and automatically. It is in this way we learn to walk swim, ride, cycle, to draw, to play a musical instrument, to speak, and to write. According to the physiological theory of memory which makes mental memory a property of brain, the whole range of memory is pure organic memory.

§ 4. (1) *In perception.* This memory comes to play in bringing of the representative recollected sensations in perception, which combining with the present sensation or the present sensations produce the percept. This implicit automatic revival on the occasion of a sensory presentation gives a percept the meaning which makes the sensory presentation an intelligible part of our conscious experience. No portion of a percept is recollected consciously as part experience of the individual or is thought consciously as a conscious act of inference leading to a conscious expectation of having some possible sensations.

SEC. 4.  
Subcon-  
scious Mem-  
ory.

(2) *In understanding meaning.*

When we rapidly read a book, the words flit through and the rapid quick way in which we understand the meaning, often takes place through a process of implicit nascent automatic revival. Ideas and images revived by memory flit along the border or fringe which separates consciousness from subconsciousness, or remain in subconsciousness giving faint glimpses or consciousness of meaning-tones sufficient for intelligible comprehension of meaning without full and complete revival of each image or idea. The pre-acquired knowledge which gives the meaning is only vaguely present in consciousness or remains in subconsciousness. Meaning, intelligibility, of a particular experience, in the light of a large mass of past experience often appears in the form of a momentary immediate flash but this momentary immediate flash involves implicit nascent automatic revival. To unfold the full significance explicitly in consciousness of the momentary vision of a flash is a different process; it means a capacity to bring into consciousness all that remaining in the subconscious mind



evolved a particular flash-like judgment in consciousness. This capacity differs in different persons and is not the same always in the same person and is not the same relating to the different parts of the mind of the same person.

SEC. 5.  
Conscious  
intellectual  
Memory.

§ 5. This Memory involves (a) Retention (b) Reproduction (c) Recognition that the image reproduced is image of an experience which was experienced in the past by the identical person who recollects, as his personal experience. A conscious act of memory impliedly involves belief in one's personal identity; this belief makes a conscious act of memory possible.

SEC. 6.  
Presentations,  
Images,  
Ideas,  
After-images

§ 6. (A.) *Presentation* — Present sensational content of every perception.

(B.) *Image* of a sensation is a copy of the sensation; it is like its echo, like a faint ghost of the original living sensation. A mental image is subjective, and remains in subjective consciousness. It may be (1) of an impression which never rose to consciousness but remained in sub-conscious mind; (2) of a conscious presentation; (3) of a percept; (4) of any other state of consciousness. Memory of a previous percept is more than a mere mental image of the percept. Memory of a percept involves the judgment that the Percept was my percept. Image may be of a visual presentation or auditory presentation or touch presentation or muscular presentation or olfactory presentation or of any other state of consciousness. In consciousness, an image is different in kind from the sensory percept; but as physiological concomitant, image of a sensation involves excitation of that part of the brain which is excited in sensation.

Th Ribot says: "The image is not a photograph but a revival of the sensorial and motor elements that have built up the perception. In proportion as its intensity increases, it approaches more and more to the condition of its origination and so tends to become an hallucination."

Image is a wider term than visual image. Image is a representative of any presentative state of consciousness, being a certain state of consciousness whatever its nature.

*Images* of past sensible experiences may be distinct and complete or indistinct and incomplete. Men differ in their capacity of forming mental images of visual experiences got through the eyes. Mr. Galton says: "To my astonish-

ment, I found that the great majority of the men of science whom I first applied protested that mental imagery was unknown to them." Of men of general society, he says: "Many men and yet larger number of women and many boys and girls declared that they habitually saw mental imagery and that it was perfectly distinct to them and full of colour."

Mr. Galton says:—"Some few persons see mentally in print every word that is uttered; they attend to the visual equivalent and not to the sound of words and they read them off usually as from a long imaginary strip of paper such as is unwound from telegraphic instruments. The experiences differ in detail as to size and kind of type, colour of paper and so forth but are always the same in the same person."

Individuals differ in capacity of forming mental *images of sounds*. Mr. Galton calls them who think by preference in auditory images as *audiles*. They think and recollect by sound-memories.

Witnesses, recollecting, of visual type of imagination, become confused if disturbed in forming visual images; witnesses recollecting by auditory type of imagination become confused if disturbed in forming of auditory images.

*Images of muscular sensations.* Memory of language may be *visual as on being written* or *auditory as on being heard* or *muscular as on being spoken* or a combination of two or more. Muscular Imagination developed in an unusual degree in Professor Stricker of Vienna.

*Images of Touch sensations.* A blind-deaf mute like Laura Bridgman shall have his imagination confined in touch sensations and muscular sensations.

As a sense may be lost, so memory of sensations of a particular sense and capacity of forming images of Perceptions of that sense may be lost.

Some new perceptual experience may appear old by illusion of memory by mingling of image of some similar experience; again a perceptual experience though experienced before may appear new, for want of revival of any sort of image of the past experience sufficient for its identification with a point of real past time.

*Sensation of sound.* When small as to be just heard, it becomes difficult to distinguish between image of sound and



sensation of sound. Hearing easily leads itself to illusion, A person hearing a person faintly speaking may think that he has heard what he only expected to hear.

Mr. Galton says: (a) It is a mistake to suppose that sharp sight is accompanied by clear visual memory.

(b) The visualising and identifying powers are by no means necessarily combined.

(c) Persons who are imaginative almost invariably think of numerals in some form of visual imagery.

(d) Now the strange psychological fact to which I desire to draw attention is that among persons who visualise figures clearly there are many who notice that the image of the same figure invariably makes its first appearance in the same direction and at the same distance.

We can by close attention to a percept get a full knowledge of its details; but when the mental subjective image of a percept is revived, in most cases it comes in a shadowy indefinite condition. We can't use this image for getting details as much as we can do in the case of a percept.

There is great difference among individuals in the capacity to form better images; and in the same person capacity differs in different cases of subjective mental imagery. A person may not be able to form a visual picture at all whereas there are persons who can perform visual pictures of absent scenes with a detailed perfection of form and colour, which seem like real perception. Images of Articulate sounds which are motor-images or images of muscle, joint, tendon sensations more or less—occur mostly with images of other kinds of sensations. We get thus motor-auditive, motor-visual types. There are persons who see well but have no power of forming visual images.

Persons differ in their habit of using mental imagery. In some auditory images are predominant; in some visual images; in some motor experiences; in some tactual or both tactual and muscular prevail; ordinarily images of smell and taste do not prevail but there are cases who have abnormal capacity for gustatory and olfactory images.

(1) In Reproductive Imagination, the thing remembered is remembered as a past state of the consciousness of the identical self.



(2) In Productive Imagination, there is no such reference. Productive Imagination is creative Imagination. It has its root in an impulse to create similar to sexual instinct to generate in the physiological world. "It shows itself at first modestly, in the invention of child-games; later and more brilliantly in the budding of myths, that collective and anonymous work of primitive humanity later still in *art* so called" (Th. Ribot). "Creation is not the child of the will but of that unconscious impulse which we call creation" "it seems to the creator as if another acted in him, through him, transcended his personality and made him a mere mouth-piece."

(C.) *Idea* is any state of consciousness of whatever nature either a full image or a broken image or a glimpse of an image or no image conveying meaning or significance, which involves reference to previous experience, conscious, or subconscious or partly both.

(D.) *Afterimage* is quite different from the revived image of memory. Sensations linger for some time as sensations after the objective cause causing the sensation has ceased to operate; then after-sensations are after-images. If a burning stick be whirled rapidly, it will look like a wheel of fire.

§ 7. We can recollect not only our presentations and percepts, but impressions and percepts which remained in the subconscious mind and never rose to consciousness before.

SEC. 7.  
Memory of  
Subconscious  
process,

The impressions made by the external world around through the senses, may not all reach the level of consciousness when the impressions take place, but they leave marks in the subconscious mind or in the brain or in both. There may be memory revival from the mark.

A person engaged in reading a book may not hear the sound of footsteps of a murderer but afterwards when the sound of the shot upon the murdered man in the adjacent room startles him, he may recollect having heard the sound of the footsteps.

A man brooding over his own thoughts passing through the street on being suddenly attacked by assailant may recollect to have perceived from which direction the assailant came although such experience was either in a very dim form in the margin of consciousness or outside consciousness when the experience took place. A child was run over and killed owing to carelessness of a coachman. An old man sunk in his

own thoughts and looking *blankly* out into the street, had his attention drawn by the cry of the child. He recollected that he had seen what happened before the child's cry. The old man spoke thus :—"I saw it all but I did not perceive and know that I saw until after the scream of the child."

When the old man's senses were affected, the necessary nervous processes for seeing the accident took place ; but owing to his attention having remained diverted elsewhere, the nervous processes did not affect his consciousness ; but as soon as he turned attention owing to the cry, the nervous processes of perception which were just dying were revived, and he had memory just as he would have had in case of conscious perception.

We see a place which produces a general impression upon the consciousness, the particulars remaining in the subconscious mind. Subsequently when asked to speak of particulars, we try to revive an image of our previous experience, and according to our capacity to revive, we may be able to speak more or less of particulars which never entered conscious experience before.

SEC. 8.  
Memory of  
Emotions.

§ 8. Memory is an intellectual process ; and an unmixed memory of an emotion, can not be emotion. But memory of an emotion accompanies memory of the circumstances which roused the emotion ; this memory of the circumstances, may engender a new similar emotion much weaker than the original emotion or stronger than the original emotion. There may be cases in which memory of an original experience may rouse up greater emotion than the emotion felt when the experience took place.

This occurrence of an emotion during recollection of the past emotion does not take place in all persons. Th. Ribot says in a note in the psychology of the emotions :

"Taking account of the criticism and of the new material supplied to me, I may once again sum up my enquiry thus :

1. The emotional memory is nil in the majority of people.
2. In others there is half intellectual half emotional memory *i.e.*, the emotional elements are only revived partially and only with difficulty by the help of the intellectual states associated with them.

3. Others and these the least numerous, have a true *i.e.* complete emotional memory ; the intellectual element being only a means of revival which is rapidly effaced.



The motor manifestations of emotion as seen in recollections of emotional demonstrative persons, can not be expected from persons of a different constitution of mind when describing a true experience. There are persons of cold intellectual type habituated to habitual restraint of emotional manifestations, who would depose about true incidents and experiences truthfully with a cool impassive motionless demeanour. Th. Ribot says :—"The false or abstract memory of feeling consists in the representation of an occurrence plus an affective characteristic I donot say an affective state. *This is certainly the most frequent form.* What remains of the small incidents of a long journey but the recollection of the places where they happened, the details and the fact that they were once disagreeable. What remains of a vanished love-affair but the impression of a person, of attentions paid to her, of adventures and besides the recollection that this was once happiness ? \* \* \* \* In all cases of this kind and there are thousands, the remembered emotional characteristic is *known*, not felt or experienced ; this is only an additional intellectual character." In the *Pure intellectual memory of Emotions*, the conditions the circumstances and the acc ssories of the emotion are recalled and the original feelling is known but there is no feeling similar to it. When this intellectual memory is alloyed with production of a feeling similar to the original feeling, the memory may be called *affective or emotional memory*. This emotional or affective aspect gives a sort of vitality to the deposition of a witness and is some index of a truthful narration, though there are persons who have sufficient dramatic power to clothe a false deposition with the emotional or affective aspect aforesaid.

§ 9. People can not always recollect correctly the grounds of their past judgment or of their conduct. This fact should be kept in mind in considering the explanations given by witnesses and parties for their conduct and their judgments.

In every day life, in regulating our conduct, we often deal with our past experience as distinctless indefinite homogeneous totalities from which significance and conclusions leap in instantaneous immediate flashes. By a retrospective reflective analytical unfolding of the implications in our judgment and in our conduct, we often give the grounds of our judgments and

SEC. 9.  
People can not always recollect correctly the grounds of their past judgment or of their conduct.



conduct, after these judgments and conduct ; and we believe that these grounds which were not distinctly present in our consciousness during judgment and conduct, are correctly given by us. But in this power of reflective retrospective reading and analysis of the workings of our subconscious mind, different persons may differ, and all do not succeed in discovering the full truth. These are cases of conscious recollection of experiences which never took place distinctly in consciousness, which were in subconscious mind and appeared before in consciousness during the judgment or the conduct in the form of an intuitive flash of vision.

SEC. 10.  
Laws of Dynamical  
conscious  
Memory or  
Laws of  
conscious  
recollection.

§ 10. Revival or Reproduction of past experience is regulated by four laws :

- (1) Law of contiguity.
- (2) Law of similarity.
- (3) Law of contrast.
- (4) Law of spontaneous Revival.

The strength of retention favours revival.

*Law of contiguity* : Under this law, on simultaneous or closely successive experience of two facts A and B, as to form a whole, part or full memory of one or happening of an experience partly or fully similar to one, revives or tends to revive the memory of the other. It is a case of reintegration *i.e.*, of experience obtained as a whole, a part suggests and revives the rest of the whole. As two conscious states are never identical law of contiguity implies operation of the law of similarity. But where the aspect of contiguous association is the prominent feature, the case is taken as an instance of a case of law of contiguity. The purely contiguous aspect of revival, is simply a case of a more or less complete revival of a complete impression on the revival of a part of such impression.

Simultaneous or closely successive experience of two facts A and B as to form a whole, is mind's experience conscious and subconscious, as determined by the objective order of the universe and the selective function of the individual mind conscious and sub-conscious.

In adult life in case of contiguous experience, the law of contiguity is not the only law which works. Our previous experience may connect itself with different parts of contiguous

experience with different degrees of strength according to our previous experience. The assimilation through law of similarity may be of different strengths relating to the different parts of the same contiguous experience. Thus some part may be forgotten and some part may be recollected. This is why a witness may forget portion of the details of the same incident seen by him. Take an incident, the execution of a bond and advance of loan. Evidence may be given about the writer, the witnesses present on the occasion, the production of the stamped paper, the writing, the signing by the executant, attestation by the witnesses, the payment of money, the delivery of the document, the order in which the people came and departed. To persons who were present during all these transactions, all facts may not interest in the same way and this may cause a difference in the revival.

*Law of similarity.* Under the law of similarity, a present experience revives or tends to revive a previous experience similar to that.

When this revival is partial, there may be mere recognition without identification of the full nature of the previous particular experience. On seeing a person, we may recognise him as seen before but may fail to say who he is and where he was met before. In the case of mere recognition, similarity only assimilates the present experience to a past one, without reviving the full past experience.

The Law of Revival of similars operates either owing to (1) intellectual similarity or owing to (2) similarity in emotional colouring.

#### *Law of contrast.*

Under the law of contrast, a present experience revives or tends to revive a previous experience more or less contrasted to it.

#### *Law of Spontaneous Revival.*

There can be revival without operation of any law of association. Images and ideas sometimes rise into consciousness of themselves; the causes may be in the subconscious processes; certain thoughts or certain feelings may possess intrinsic tendency to thrust themselves into consciousness. The key to this power of intrinsic excitability should be sought

in the nature of man, his habit, disposition, interest and everything that go to compose his nature.

SEC. 11.  
Conscious  
intellectual  
memory,  
voluntary  
and involun-  
tary.

§ 11. (1) In *involuntary conscious memory*, the self is comparatively passive, without any conscious effort of attention to direct and control the course of memory revivals, although the activity implied in consciousness is not absent. In this state, the percepts, the images and ideas, go on suggesting and reviving the images and ideas.

(2) When the self by an effort of attention directs the course of suggestion and revival, it becomes voluntary revival. The mind is launched to particular trains of thought which may lead to what we are in search of. We recollect that we have the material we want; we try to get out that material from the subconscious mind by directing conscious attention to a fact which by operation of any law of recollection, may bring to consciousness, the material sought for. Sometimes merely putting ourselves in an attitude of search for that matter and with some fixation of attention on that attitude, brings to consciousness that matter either at that time or some time after or after a sleep or after diversion of mind to something else.

Voluntary revival works by utilising often the conscious process of non-voluntary revival or the help of the subconscious mind.

SEC. 12.  
Law of Re-  
tention or  
Laws of  
statical  
Memory.

§ 12. (1) Retention varies directly with the strength of the impression created by the original impression to be revived. This depends upon the interest felt at the time and the degree of attention given at the time of the original impression.

(2) Congenital difference there exists in the power of retention.

(3) Retention varies directly with the frequency with which the original impression was experienced or recollected. The same number of repetitions repeated at one time would give less enduring retention than if those repetitions be scattered over a certain length of time, being repeated at intervals. On the last alternative, attention can play better and avoid the effect of monotony.

(4) Retention varies directly with the recency and freshness of the impression. But in old age, recent experiences are forgotten whereas old memories are recollected.



(5) Retention is favoured by increase in the tie of contiguity (either of simultaneity or of succession), which increases with repetition of contiguous experience.

(6) Retention depends upon the nature of synthetic attention exercised at time of the original experience. If at time of the original experience, it is assimilated or integrated to our past experience by comparison, it can be easily revived afterwards. If the original experience was carefully examined and connected with our previous experience by the different ties of similarity or contrast, at all the possible points of connection, the experience obtains a definite place in the whole system of our previous experience. This is receiving new experiences into "wholes of apperception."

(7) Retention depends upon the development of sensibility. When a sense organ is better developed, the impressions received through it, are of superior nature and naturally rouse interest and attention; and these presentations are better recollected. One may have better visual memory, another better auditory memory, another better olfactory memory, another a better muscular memory one a better memory of joys, pleasures, and another a better memory of pains.

(8) Retention is conditioned by the special aptitudes, education, pursuit of life of individuals. A painter is likely to recollect better colour and forms of things; a musician is likely to recollect better harmonies of sound; one whose external senses have been better developed and habitually exercised with attention, is likely to recollect better percepts obtained through senses, one accustomed to abstract thinking and possessing aptitude for the same is likely to recollect better abstract thoughts.

(9) Whatever improves the health of the brain helps retention. Fatigued brain is against retention while a fresh brain after repose is favourable to retention.

(10) Attention follows interest. Attention during original impression helps retention; interest, therefore, helps retention. A man's memory is, thus, controlled by the interest of the man.

(11) Some have an active enquiring state of mind which forces attention on whatever is passing before them. While

others remain in a listless inactive condition and move like a blind man. Many people are blind to all experiences before them save the limited ones which interest them ; and these they see again in the light of their narrow beliefs, interests and prejudices.

Reproduction or Revival is aided by the strength and the number of ties binding the experience recollected and the experience which caused the reproduction. The stronger the retention, the weaker may be the tie-force for the revival. A stronger tie-force may keep a weaker retention from loss. The past experience remains as a coordinated organized system ; the strength of the organization gives greater vitality to the individual ; the strength of the individuals increases the efficiency of the organization. The memory-life of the mind thus shares the characteristics of organic life.

SEC. 13.  
Revival by  
emotional  
(i. e., feeling)  
similarity.

§ 13. In the case of each feeling or emotion, revivals take place which give food to and satisfy the emotion or feeling. Each emotion or feeling has a sort of individuality, and the impulse at its root, works like its soul bringing everything that helps its self-preservation and selfadvancement. This organising selective activity at the root of every feeling or emotion, which may be called the soul or mind of the feeling or the emotion, explains the existence of the law of revival by emotional similarity.

Every emotion tends to call up ideas congruent to it and which nourish it. Every emotional mood is the centre of attraction of all ideas, necessary for its existence, growth and fulfilment. A strong feeling may inhibit a revival opposed to its interest and may revive a faint memory favourable to it.

Of the same experience, even the same witness deposing with *conscious* honesty, may have different revivals on two different emotional moods. If emotionally friendly to a party he may have one sort of revival ; if emotionally hostile to a party, he may have revival not fully agreeing with the 1st one

The law of revival by emotional similarity may be considered in a narrow sense as well as in a very broad sense. In a very broad sense, even the law of revival by intellectual similarity may be called only a special case of the law of revival by emotional similarity, taking the intellectual interest of intellectual similarity as an emotion (i. e., a feeling). But

it is better to restrict this law to its narrow signification *i.e.*, to those cases in which the feeling-element is more predominant than the intellectual element.

Deep submerged subconscious feelings may influence our life. The pleasure of enjoying a bloody scene in a theatre by civilised men is a case of this type. The conative-affective disposition of an individual—jolly, melancholy, ambitious, timid erotic exercise a subconscious selection upon the ideas. The unity of many dreams is to be found in the unity of the organic disposition arousing them (such as sexual excitement, fatigue, indigestion.) Revival by emotional similarity is the selective activity of a conative-affective disposition.

The Reviving power of emotions may be called the "heart's memory." The miser never forgets his losses, the lover never forgets a favourable opportunity, the ambitious nothing that serves their projects ; the proud man never forgets a wound to his honour, the vain recollects every word of praise and every distinction offered.

§ 14. In this case, the similarity is one based on the very nature of experience and not in the subjective feeling condition of the mind. But this similarity existing in facts and circumstances of the objective world, must be one detected by the mind and reduced to mind-stuff, before it can operate in the mind. The similarity must become as similarity known by the knowing subject, whether consciously or subconsciously. In this perception of similarity, there is an emotional state, but the intellectual element predominates. This similarity may be also among our subjective states of mind.

SEC 14.  
Law of  
Revival  
under intell-  
ectual simi-  
larity.

Every perception of intellectual similarity on analysis implies a general concept of which the similar feature is an attribute or connotation. Such a general concept involves an unifying act of the intellect. This impulse to unify and organize experience is a primordial characteristic of the intellectual or cognitive aspect of the Human mind. The law of revival by similarity is only a particular manifestation of this unifying activity. Each similarity or general concept based on it works like a force, being the impulse of the unifying activity of the Human mind.

Many unifying impulses spring out of our subconscious mind, and the conscious mind only sees the result



and sometimes examines the similarity consciously for verification. The work of the conscious mind in processes for finding similarity or general concepts may be consciously carried on in scientific researches and in all complicated cases of investigation but the subconscious mind and conscious mind co-operate and help each other in these conscious processes.

What is called memory is only an abstract aspect of the organic unity of the living mind.

SEC. 15.  
Degrees of  
revival.

§ 15. Persons differ in their capacity to form images of their different presentative-sensations. The fuller the image of a former percept, there will be better memory of the particulars of the percept.

A person may be recognised when present though from his name, no visual picture of his face can be formed. A witness when questioned in a court as to whether he will be able to recognise a certain person may try to form a visual image of his face and failing to do that, may say that he will not be able to recognise. But on actual production of the person, he may recognise. A witness may recollect a man and may say that he would be able to recognise him and may actually recognise him ; but he may be unable to recollect whether in a previous occasion the person had a cap on his head. There may be cases in which incidents of a locality are better recollected in the locality. In investigation for finding out truth before a Judicial trial, examination of witnesses in the locality of an occurrence may be in many cases, more helpful.

A person may identify a person or a thing without being able to give a correct description of the person or the thing before hand. The lower animals some time show great power of recognising. In recognition, partial revival of image is sufficient and this takes place only in presence of the object.

We find no two persons having the same countenance. We may distinguish and identify some thousands of faces but it may be difficult to express in language what distinguishes one face from another. A person may find out his things from a collection of many similar things but it may be difficult to state in language, the difference. The consciousness of difference is felt in conscious mind ; the subconscious mind sees in what the difference lies but this matter can not be brought to consciousness.

In immediate recognition, the common element through which recognition is made is *felt* but is not consciously grasped for expression in language. In mediate recognition, the common link through which recognition is made is distinctly brought to consciousness. By a certain mark I may recognise a certain garment returned by washerman, as my own. But the recognition of this mark if takes place as the identical one put by me, takes place by an act of immediate recognition in which the common element—the connecting link—remains subconscious. All mediate recognition is based on probable inference or on immediate recognition which involves subconscious activity of the Human mind.

§ 16. A fact may not be recalled when attempt to recollect is made but may be recollected afterwards. But when a fact cannot be recalled at all, it becomes a case of oblivion. The greater the weakening of retention and of the ties of recollection which may drag into consciousness, the less the chance of recollection. The recollection in abnormal mental condition of facts which can not be recollected in normal condition, shows that under proper conditions, facts thought as lost from memory may be recollected.

SEC. 16.  
Oblivion.

Apparent oblivion is no proof that there can be no recall under proper conditions. In ordinary every day life, after an attempt to revive we cannot say that we have exhausted all possible means of revival.

To disbelieve a piece of evidence simply on the ground that on a previous occasion, a witness said that he did not recollect, is not fair. Every particular case of such revival should be however examined in relation to all the possible circumstances which may throw light on the issue namely whether there was real oblivion on the 1st. occasion.

The range of recollection is less than the range of retention. Facts which can not be remembered in normal condition of waking, may be remembered in dreams, in hypnotism and in certain forms of brain derangement.

Dr. Carpenter thus speaks of the experience of an Equity Judge: "It has frequently occurred to him that "further proceedings" having been taken in a cause which he had heard some years previously and had dismissed altogether from his mind, he has found himself in the first instance to have totally

forgotten the whole of the former proceedings, not being even able to recollect that the cause had been previously before him. But in the course of the argument, some word or phrase or incident, has furnished a suggestion, that has served at once to bring the whole case vividly into his recollection, as if a certain veil had been drawn away and a complete picture presented to his view." Dr. Carpenter remarks: "The entireness of his previous forgetfulness was probably due to the habit common to Barristers, of "getting up" their cases only to forget them as soon as possible."

Dr. Abercrombie says: "Dr. Prichard mentions a gentleman, who suffered a severe injury by a fall from his horse, and on his recovery had no recollection of any thing relating to the accident or for some time before it. A considerable time elapsed before his recollection of it began to return, and it was only as he repeatedly rode over the country where the accident had happened, that the sight of the various objects gradually recalled the circumstances of the journey, in which it occurred and of the accident itself."

With greater or less incapacity to attend to present objects in illness, there may be wonderful increase of recollection relating to old impressions. A similar phenomenon happens in old age.

The following cases mentioned by Dr. Abercrombie are referred to by way of illustration:

(1) A man who for many years had entirely lost the habit of speaking French spoke French when under the effect of an injury of the head.

(2) A person who had forgotten Welsh, on partial recovery from a state of stupor caused by injury, spoke Welsh but on perfect recovery he forgot Welsh again.

(3) A woman a native of the Highlands accustomed to speak English recovering from a fit of apoplexy just sufficient to look around her with an appearance of intelligence, could not understand English but understood Gaelic.

(4) A boy of four had a fracture of the skull for which trepanning had to be done. He was at the time in a state of perfect stupor and after recovery had no memory of the accident or the operation. During the delirium of a fever at the age of the fifteen, he gave his mother an account of the



operation, and the persons who were present at it, with a correct description of their dress and other minute particulars. He had never been observed to allude to it before and no means were known by which he could have acquired the circumstances which he mentioned.

(5) An ignorant servant girl, mentioned by Coleridge, during the delirium of a fever, repeated passages from the theological works in Latin, Greek, and Rabbinical Hebrew, which being taken down and traced to the works from which they were derived, were found to have been repeated with perfect accuracy. She had been servant to a clergyman of much learning, who used to read aloud his favourite authors.

Injuries of head may cause loss of recollection relating to the accident causing the injury or for some time before it, but the circumstances may be gradually recalled with lapse of time on bringing to consciousness of something connected with the accident. In attacks of an apoplectic nature, singular examples of loss of memory on particular topics or extending only to a particular period, are met. One of the most common, is loss of memory of words or of names whilst the patient retains a correct idea of things and persons.

Dr. Abercrombie mentions a peculiar case in which a gentleman having mental faculties so entire that he was engaged in most extensive agricultural concerns could not understand the name of an object when spoken to but understood it perfectly when written.

Dr. Abercrombie mentions the case of a gentleman who after a blow on the head, lost his knowledge of Greek and did not appear to have lost anything else.

Owing to great concentration of mind on a subject, there may be temporary forgetfulness relating to some other matter. But this forgetfulness may lead to misunderstanding in practical every day social life.

A person walking in a park with his mind engrossed on some train of thought, may forget to salute an acquaintance and may subject himself to a charge of improper behaviour. Stories are heard of cases of forgetfulness—the result of distraction. Samuel Johnson walked a long distance with one foot in the gutter and one on the walk ; Sir Isaac Newton thought that he had eaten while he saw the chicken bones on

his plate ; Edison forgot his wedding day. Persons having absorbing subject to engross attention, may owing to distraction, become subject to charge of discourtesy by omission in their behaviour. As revivals take place owing to emotional similarity, there may be forgetfulness owing to emotional dissimilarity. Every emotion tends to prevent recollection of facts which are against its interest. Dr. Morton Prince says :—"In every day life intense emotion excludes from the field of awareness, thoughts that are unrelated, antagonistic to and incompatible with the ideas exciting the emotion and perceptions of the environment that ordinarily would enter awareness. The field of consciousness is thereby contracted and limited to thoughts excited by or associated with the emotion. \* \* \* Conflicting memories and correlated knowledge that would modify the point of view and judgment and mollify (inhibit) the anger, are suppressed and cannot enter the focus of attention. Further a person in such a state may not perceive many ocular, auditory, tactile and other impressions coming from the environment ; he may not see the people about him, hear what is said or feel what is done to him, or only in an imperfect way. All these sensations are either actually inhibited or prevented from entering awareness (dissociated) by the conflicting conative force of the emotion. In other words, there is a dissociation (or inhibition) of consciousness and consequent contraction of its field to certain emotional ideas."

SEC. 17.  
Some in-  
stances of  
partial  
memory.

§ 17. (1) In cases when persons are recognized only when seen in the accustomed places, the cases are of impairment in the memory of persons, while memory of places remains unimpaired.

(2) A person may understand a language when spoken to but may fail to express himself in that language.

(3) Memory of words may be impaired ; one term may be used for another. Memory of a particular class of words may be lost. A person may give the letters of a word but may fail to give the word. A person may fail to catch the meaning of a word as spoken, though he understands the same when the word is written or printed. A word as spoken may be understood but may be meaningless when written or printed, although the component letters may be recognised.

(4) A deed-writer comes to depose and speaks of the deed before the court. When generally asked to tell particulars about

other deeds written by him, he may fail to give particulars of any other cases. This may happen for his laziness to search painfully the dim caverns of his memory, in absence of spontaneous revival. The particular deed before him through law of association helps revival in the particular case, whereas in absence of any cause existing spontaneous revival of memory of any other particular case, he may fail to mention a different particular instance. *There is a great difference between the presence and the absence of something to suggest and to remind.*

§ 18. This difference depends upon nature of original disposition and upon the direction of attention according to nature of interest and pursuit of life. The father of Hans Gross had such a bad memory of names that very frequently he could not recall his son's Christian name but his memory for figures was astounding. Many of the cretins and half cretins possess wonderful memory for certain things. A person in immediate charge of domestic management of a household when that is his sole business, may recollect many particulars, which the master of a house of better and superior memory in other department may not recollect. An incident concerning the department of a subordinate officer may be better remembered by him than by the general manager of a big Estate, although of better and superior memory in other department.

SEC. 18.  
The memory of the same person may be different in the different departments of knowledge.

§ 19. Memory illusion is memory of a past experience as having been experienced by the self, which it did not actually experience. Memory illusions sometimes lead to differences, disputes, misunderstandings ; they frequently cause false evidence.

SEC. 19.  
Illusions of Memory.

Mr. Arthur C. Train says : "The witness remembers in a large proportion of cases what he wants to remember or believes occurred. The liar with his prepared lie is far less dangerous than the honest but mistaken witness or the witness who draws inadvertently upon his imagination." "The greatest difficulty in the trial of jury cases so far as the evidence is concerned lies in the fallibility of the human mind and not in the inventive genius of the devil. An old man who combines a venerable appearance with a failing memory is the witness most to be feared by either side."



Illusions of memory may be of different degrees :—

(1) The whole incident remembered may be false. This high degree of illusion in memory, corresponds to hallucination in perception.

(2) The incident as a whole is not false but particulars become so much changed owing to partial oblivion and partial filling-up by imagination, that the incident comes to wear a new appearance.

(3) Mistake may be relating to a certain point, such as, time of happening of the incident.

SEC. 20.  
Causes of  
False  
memories.

§ 20. (1) Oblivion.

(2) Constructive imagination.

(3) Conative affective tendencies.

(4) Overlapping and confusion of experiences.

(5) Self suggestion and external suggestion, in moods somewhat similar to hypnotism. False memories in dreams and hypnotic states and states between sleep and wakfulness are not dealt here.

SEC. 21.  
Oblivion as  
cause of  
memory  
illusion.

§ 21. Through oblivion, part or whole of an experience may be forgotten. This gap may be filled up by the constructive imagination. This constructive imagination may be guided by intellect or by affective conative aspect of the mind. When guided by intellect, the state of things which would have probably happened as inferred from the surrounding circumstances, is believed to have actually taken place. When guided by the affective-conative aspect of the mind, the constructive imagination creates what the heart desires ; and this creation is believed to have actually happened.

There is a type of idle, careless, hasty mind, which in the absence of spontaneous revival, does not like at all to take the trouble of a mental exertion to get a revival. If pressed for an answer, they give whatever comes to their lips as possible recollection and may even believe that to be true recollection. The effect of proper volition and concentration of attention to secure revival, can not be ignored.

There are persons of bad memory having only faint indistinct uncertain recollections of almost every incident of their lives but no clear and definite impression relating to any. No question ought to be decided on the uncorroborated testimony of such persons. A person may have good memory

relating to one class of facts and bad memory relating to another class of facts ; cross-examination for testing the memory should be confined to that class of experience to which the evidence relates.

§ 22. There are persons of vigorous imagination, whose minds are always active in creating full images of much clearness and distinctness. These images of great intensity tend to approach presentative sensations. Afterwards they come to believe that these imaginary incidents were real events of life. During actual operation of the imagination, under the powerful inhibitive control of sensory presentative experience they may avoid having illusions and hallucinations of perception, but in the dim light of memory, their imaginary creations appear as real past objective experiences. Again, an experience of another may be referred to oneself by Imaginative children. Vivacious children often think that they have experienced what is told them. Children who intensely desire anything, think that they got it.

SEC. 22.  
Constructive  
imagination  
as cause of  
illusion.

§ 23. Emotions are sometimes causes of memory-illusions.

A narration relating to an object of love by a lover ; a narration relating to an enemy or a person whom one hates ; a narration relating to a person whom one envies ; a narration relating to a person whom one admires and adores ; a narration relating to incidents given to support a strong belief which the narrator entertains : all such narrations become subconsciously modified according to the exigencies of the emotion inspiring the narrator. Afterwards the incorrect account given subconsciously come to be believed by the narrator as real. Our egotism is a powerful factor in causing memory illusions. In giving an account of ourselves, many sometimes give partly imaginary accounts pleasing to self-feeling and afterwards some of them may come to believe them to be real.

SEC. 23.  
Conative  
affective  
tendencies  
as cause of  
illusion of  
memory.

§ 24. Overlapping and confusion of experience lead to memory illusions by partial oblivion. All experience of one part of time is referred to another part of time. A false plea of alibi may be proved by truthful witnesses suffering under an illusion that the accused was in their company on the occasion of the offence, while he was so on some other occasion. Dream experiences are sometimes recollected as real experience of waking condition,

SEC. 24.  
Overlapping  
and confu-  
sion of  
experience.

SEC. 25.  
Suggestions  
in moods  
akin to  
hypnotism.

§ 25. In Hypnotised condition, any belief can be created by suggestion. A false memory can be created by suggestion in hypnotic condition. In debilitated weak condition of the mind, in fatigued condition of the mind, a false memory may be created by auto-suggestion or by external suggestion. Under the influence of a person in authority or a person whom one reveres and obeys, or under the pressure of beliefs of persons around us or the pressure of social or public opinion, a false memory necessary to conciliate and to be in harmony with authority or environment, may spring up in some persons.

SEC. 26.  
Illusions of  
memory in  
normal  
persons.

§ 26. Illusions of memory in normal persons are more frequent than they are ordinarily thought to be. The world of external perception is like the world of sun-lit day-light; while the world of memory is the world of shadowy moon light. The images are like the faint echoes of percepts. The world of external perception can be seen by many persons at the same time but each one alone perceives his memory's dim and shadowy field. Hans Gross says; "A large portion of the contradictions we meet in our cases is explicable by the fact that one man is the victim of his fancies and the other is not \* \* \* Perhaps all imaginative people are likely to take their imaginings as actual remembered events and persons."

The confessions of the witches in days of witch-craft showed memory-illusions which may be called memory-hallucinations. Their confessions of intercourse with the devil and participation in orgies, were in many cases merely memory-hallucinations created by external suggestion of the circumstances surrounding their prosecution as witches.

SEC. 27.  
Professor  
Hugo  
Munster-  
berg's  
confessions.

§ 27. Professor Hugo Munsterberg remarks thus about an occasion when he in spite of honesty was once led to depose incorrectly:

"In this way, in spite of my best intentions, in spite of my good memory and calm mood, a whole series of confusions, of illusions, of forgetting, of wrong conclusions, and of yielding to suggestions were mingled with what I had to report under oath, and my only consolation is the fact that in a thousand courts at a thousand places all over the world, witnesses every day affirm by oath in exactly the same may much worse mixtures of truth and untruth, combinations of memory and of



illusion, of knowledge and of suggestion, of experience and wrong conclusions."

§ 28. Every statement of a witness should be tested by answer to the two following questions ?

SEC. 28.  
Statement  
of a witness.

(1) Is the witness reporting correctly what he believes in good faith to be true recollection ?

(2) Does the recollection of the witness agree with the real fact recollected ?

The second question is a question of correct memory and correct perception.

To give a satisfactory answer to this first question, it requires to be determined how far the particular witness is faithful and efficient for narrating what he believes to be true recollection.

If his powers of perception, retention, reproduction, attention, if his interest, association, suggestibility, relating to facts similar to the fact of evidence be tested by experiments in the Laboratory, the report would be very valuable for determining the proper worth of his evidence. In the absence of such an experimental test, a decision can not be so better as it would be with its help. As there are persons with different types of memory, the existence of a particular type may be easily determined by Laboratory Experiment. A person may show strong memory relating to experience of particular sense organ or sense organs but may possess very bad memory relating to another sense organ. A person may have good memory relating to one class of facts but may have bad memory relating to another class of facts.

Prof Munsterberg says : "In the life of justice, trains are wrecked and ships are colliding too often, simply because the law does not care to examine the mental colour blindness of the witness's memory."

A subjective feeling of certainty in the mind of the witness cannot give us objective truth always.

The subjective certainty in the recollection of an experience springs from (1) the *vividness of the image of experience recalled* or from (2) the inference conscious or subconscious of the compatibility of the representation revived with other past experience, the recollected fact being part of a wider past experience.

The present memory of a past experience, is a present state of consciousness. The *feeling* that a present image is image of a *particular past experience* of the same self, may attach itself to an image of a really past experience or to an image which is the creation of constructive imagination or to an image of a different past experience. In spite of subjective certainty of the witness-mind, the record of the objective fact may become more or less incorrect in the *perceptual process*; and even that imperfect record may be imperfectly or wrongly revived in the *memory-process*.

An experiment on powers of observation and recollection in the university seminary of Professor Von Liszt in Berlin, showed the following result :

"As mistakes there were counted the omissions, the wrong additions and the alterations. The smallest number of mistakes gave 26 per cent of erroneous statements; the largest was eighty per cent. The reports with reference to the second half of the performance, which was more strongly emotional, gave an average of fifteen percent more mistakes than those of the first half. Words were put into the mouths of men who had been silent spectators during the whole short episode; actions were attributed to the chief participants of which not the slightest trace existed; and essential parts of the tragedy-comedy were completely eliminated from the memory of a number of witnesses" (Prof. Munsterberg in psychology and crime.)

A similar experiment in Gottingen in a meeting of a scientific association made up of jurists, psychologists, and physicians, gave the following result :

"Of forty reports handed in, there was only one where omissions were calculated as amounting to less than twenty percent of the characteristic acts; fourteen had twenty to forty percent of the facts omitted; twelve omitted forty to fifty percent and thirteen still more than fifty percent. But besides the omissions there were only six among the forty which did not contain positively wrong statements; in twenty-four papers up to ten percent of the statements were free inventions and in the answers that is, in one-fourth of the papers—more than ten percent of the statements were absolutely false, in spite of the fact that they all came from scientifically trained

observers" (Prof. Munsterberg in psychology and crime). Prof. Munsterberg says: "The scientific commission which reported the details of the enquiry came to the general statement that the majority of the observers *omitted or falsified about half of the process which occurred completely in their field of vision.*"

In both these experiments, certain occurrences were produced, which the observers whose statements were taken took as real ones and the results of observation and recollection were examined.

The following personal anecdote of Professor Munsterberg is interesting: "I had occasion recently to make an address on peace in New York before a large gathering, to which there was an unexpected and some what spirited reply. The reporters sat immediately in front of the platform. One man wrote that the audience was so surprised by my speech that it received it in complete silence; another wrote that I was constantly interrupted by loud applause, and that at the end of my address the applause continued for minutes. The one wrote that during my opponent's speech I was constantly smiling; the other noticed that my face remained grave and without a smile. The one said that I grew purple-red from excitement; and the other found that I grew white like chalk. The one told us that my critic, while speaking, walked up and down the large stage; and the other, that he stood all the while at my side and patted me in a fatherly way on the shoulder."

§ 29. Witnesses can answer off-hand when they come prepared with their answers; other wise it is not possible to give offhand answers always. In many cases, a witness may require time to find out the answer from his memory. Under the pressure of the Judge or of the counsel for giving an answer quickly, a witness may be tempted to say whatever comes to his lips. No doubt sometimes an intelligent partisan witness may take time to consider the effect of his answer before answering, with a view to depose falsely if necessary. On the other hand, in many cases, time may be required for correct recollection. It often happens that we know a thing but we are unable to recollect it. We feel a gap; we try to fit this, to fit that with it, but only the true recollection fits with the gap. This search to find the proper recollection which fits

SEC. 29.  
Reasonable  
time should  
be given to  
witness to  
answer  
questions,  
when  
desirable.



in with the gap, may require some time. A hasty witness, a witness not having sufficient power of volition and concentration of attention, a witness pressed to be hasty by the Judge or the counsel, may give whatever comes to his lips without sufficiently testing it as to whether it exactly fits in with the gap of the true recollection.

The search for a lost experience which will fit in with the gap, may require revival of various memories which may be associated with the one sought for. This search for associates of the recollection sought for, may take time.

SEC. 30.  
Personal  
preparation  
of the  
witness  
before his  
deposition.

§ 30. It is always a good thing for a witness before his deposition to try to recollect correctly in every way relating to the subject matter on which he might be required to depose. Having regard to the machinery of memory, the best result, in the interest of truth, can not be had by an off-hand deposition before the court, without any previous personal preparation.

But an attempt to secure revival by speaking over the matter with a party or parties or any witness or witnesses, may cause memory-illusion. In a litigation passions are stirred and many witnesses and outsiders even feel some sort of contagion and come to take sides. Every dispute tends to produce some sort of party feeling. The emotional bias may lead to memory-illusion.

It may lead a witness to believe something false if it helps the party whom he sympathises and may inhibit revival of experience adverse to that party. Among the human minds, there are some who naturally lead, and there are some who are naturally led. Among witnesses, it, on many occasions, happens that some one or more come to exercise dominating influence upon others relating to the subject matter of evidence. The statements of these dominating minds may operate more or less like suggestions of a hypnotiser to his subject.

Comparison among witnesses of their recollections may have divergent effects ; (1) It may cause recollection of what would not have been otherwise recollected (2) It may cause memory-illusion and lead a witness to believe as his recollection the fact conveyed by the statement of another witness or witnesses.

A witness by every effort to be honest may control his conscious mind and report just as he recollects but he can

not have any control upon his subconscious mind if it becomes dishonest on the occasion.

§ 31. Strong memory based on contiguity may be found in idiots and persons of weak intellect whereas a good memory through similarity is ordinarily a characteristic of a well cultivated mind. Both the bench and the bar in actual practice should try to discriminate between these two types of memory.

SEC. 31.  
Memory  
through  
contiguity  
Memory  
through  
similarity.

A contiguous type will narrate occurrences as they happened and may get confused if pressed to select and state only what is relevant to the question. Dr. Leyden, once being congratulated by his friend for his good memory, said that it was often a source of great inconvenience to him ; that when he wished to recollect a particular point in anything which he had read, he could do it only by repeating to himself the whole from the commencement till he reached the point which he wished to recall. In this case, a well cultured person was a victim of mechanical memory of contiguity relating to one department.

Sometimes a person who has sufficient memory through similarity, deposes like one having contiguous type of memory, because he is repeating an ill-digested false tutored evidence.

§ 32. A witness can answer a question asking reasons for his recollection of a matter, only by becoming a psychologist. It requires concentration of attention upon the subjective mind, psychological retrospective introspection and analysis. A trained psychologist of ability, may sometimes fail to give a correct answer to such a question. The majority of people are tempted to give by way of answer whatever floats into their consciousness with an appearance of explanation. A question of the present nature is ordinarily asked in case of a recollection what seems unusual to the questioner. An experience may be part of a large experience, and only by recollecting the old experience, thinking over the nature, the particulars, the circumstances of that experience and its relation to other experiences of one's life, that some sort of inference may be arrived at for a particular unusual memory. The links which bring up a fact of unusual memory, may be all in subconscious mind and incapable of being brought to consciousness. When unable to find any reason, a witness may

SEC. 32.  
Questions to  
witnesses  
asking  
reasons for  
certain  
recollections.

be tempted to give any reason which will be an explanation according to the conventional beliefs prevalent.

SEC. 33.  
Memory of  
an illiterate  
person.

§ 33. It is not a good proposition to say that an illiterate person has bad memory or is not likely to have normal memory. An illiterate person may have very good memory relating to facts of external observation though he may sometimes suffer from an incapacity to express them satisfactorily in language. An illiterate person may have very strong memory relating to matters of his special experience. High mental power is likely to be accompanied with bad mechanical memory in many cases.

Capacity to read and write is only an acquisition. Memory depends upon the mind ; a person with good proper memory might not have learnt to read and write on some other ground. But where there was every opportunity for learning reading and writing and for increase of learning, and a person is found to be illiterate though in the ordinary course of things we would expect that he would learn to read and write, his incapacity suggests a defect in the mental constitution. Mental culture helps development of memory ; but mere too much of book learning without living frequent intercourse with men around, and nature may tend to dull one's memory relating to men around and nature

SEC. 34.  
Recollection  
of memories  
that can not  
be re-  
collected  
under  
ordinary  
process of  
recollection.

§ 34. Facts that can not be ordinarily recollected may be reproduced in the following processes :

(1) The method of automatic writing which may give out facts which the conscious personality can not recollect.

(2) Lost memory can come back in dream.

(3) Lost memory may appear in hypnotised condition.

(4) Lost memory may appear in a hallucination.

(5) Lost memory may appear in a crystal vision,

Under the existing legal procedure in India, none of these methods so far under human control can be used for interrogating the memory of witnesses ; but investigators in search of clues for securing evidence, may use any of these methods so far under human control.

SEC. 35.  
Refreshing  
memory of  
witness.

§ 35. Section 159 of the Indian Evidence Act, provides aiding recollection of witness by reference to :

(1) Any *writing made by witness himself* at the time of the transaction concerning which he is questioned or so soon



afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

(2) Any such writing made by any other person and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

(3) Any copy of any of the aforesaid documents with the permission of the court, when the court is satisfied that there is sufficient reason for the non-production of the original.

(a) The reference may be made by the witness by reading it himself or when unable to read by having it read over.

(b) The *recollection* is to be only aided by the writing. The original writing referred to in this section will aid under both the law of revival of similars and the law of contiguous association. But when the copy is used, the revival would be under the law of revival of similars alone. From section 159 I. E. A, it is clear that in the presence of the court during actual examination, the memory cannot be aided by any copy for nonproduction of original of which there is no sufficient reason or by any writing made by person other than the witness not read by the witness, or by copies of such writings ; but as under the law of similarity, there might be recollection even under these cases the benefit of such revival can be secured by any party before such examination if he can secure sufficient access to the witness for such purpose. Under such a circumstance, it is desirable that the law should secure this benefit to the parties during actual deposition in court. Sec. 160 I E A provides that a witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, *if he is sure* that the facts were correctly recorded in the document. This section provides for cases where the facts can not be recollected but there is the general recollection that the facts were correctly recorded.

(1) Where the writing is in the hand writing of the witness the witness may recollect (a) that the whole record was correct though he has no memory of the facts themselves (b) or as the record was in his hand writing and as he never records anything incorrect, and habitually records what is correct therefore the record is correct. The last alternative is also a case of memory but memory of a very broad character ; in the

1st, alternative the general memory just covers the particular case whereas in the latter alternative the general memory covers a still broader area which covers this particular case and other cases.

When the writing was made by another person and read by the witness, the witness might recollect the record to be correct without specific recollection of the facts themselves, by recollecting his consciousness of truthful record when he read it. But when he can't recollect reading by himself although reading by him is proved by other evidence, he may still be sure that the record is correct if he believes that the man who made the record never makes a false record in such a case. But the question is:—whether this assurance owing to belief in a third person will be covered by the expression "Sure" of this section. But if he recollects the record to be correct without recollecting that he read it although reading by him is proved and he does not make his recollection that the record is correct depend upon his confidence in the writer alone, the case certainly ought to fall under Sec. 160.

Section 159 I. E. A. does not state that the copy would be one written by the witness or examined by the witness and found correct. For recollection, any copy prepared by a stranger and never referred to before by the witness may help recollection through the law of similarity; but such a copy can not enable a witness to depose that he is sure that the facts in it have been correctly recorded when he has no specific recollection of the facts themselves. But when the copy is one written by the witness or examined by him and found correct, he might be sure that the facts were correctly recorded in the copy without any specific recollection of the facts themselves, but this involves memory of the fact that the original record was correct.

It is unnecessary to discuss here from a lawyer's stand point whether the expression "any such document" in section 160 I. E. A. includes copies referred to in Sec. 159 I. E. A.

A person on being taken to a scene of incident may remember things which he could not recollect before. By a process of suggesting various facts, some one may draw out from oblivion a lost experience. I. E. A. does not expressly provide for asking such oral questions during actual deposition

as help to recollection of an apparently lost experience. But with leave of the court a party may ask his own witness leading questions to help his memory. When a party's witness who is a proper witness to depose about a material fact can not recollect, a party with court's leave, may cross-examine him to show that his memory failed when he was incapable to give the answer wanted, and in the course of such cross examination questions may be put which might through working of laws of association restore the lost memory.

§ 36. (a) In the earlier stages of all febrile diseases, in debility succeeding acute diseases, in persons broken down by intemperance, in the first approaches of old age, often in case of a disordered state of the stomach, there is the state of mind in which the attention can not be steadily directed to a long and connected train of thought or to anything requiring a continued effort of mind.

SEC. 36.  
Memory in  
certain con-  
ditions of  
the body.

(b) In a more advanced state of febrile diseases, in the higher degrees of the condition which results from habitual intemperance, in the more advanced periods of old age, a mental condition is met in which the impression made by external things is not sufficient to produce remembrance, though there appears to be, at the time, a perfect perception; a person in this condition understands what is said to him and answers correctly *but very soon forgets what has passed*; he knows a friend and is happy to see him but in a short time forgets the occurrence.

This condition occurs also in diseases of the brain and in cases of injuries of the head.

(c) In delirium and various degrees of it, the capacity to receive full impression from external things ceases; the external impressions are either not perceived at all or if perceived they are perceived in a manner which cannot convey any distinct notion of their relations to the mind; ideas existing in the mind are believed to be realities.

(d) Idiotism may supervene affections of the brain and protracted febrile diseases. The condition may become permanent or may be recovered from slowly or suddenly. Court should make due allowance for the damage caused to the mind by repeated attacks of malarial fever, or by attacks of remittent fevers or of any protracted illness or any injury to the brain,



Dr. Abercrombie mentions the case of an American student—a person of considerable attainment—who on recovering from a fever, was found to have lost all his Latin knowledge. When his health was restored he began to apply to the Latin Grammar, had passed through the elementary parts and was beginning to construe, when one day in making a strong effort to recollect a part of his lesson, the whole of his lost impressions suddenly returned to his mind and he found himself at once in possession of all his former acquirements,

## CHAPTER XI.

### SOME LAWS OF MENTAL DYNAMICS.

§ 1. There is mind in every plant ; but this is unconscious organic vegetable mind. Mind becomes conscious first in the animal world. In this evolution of conscious mind which possesses an aspect of subconscious life, no boundary can be anywhere set between its first dim awakening and its highest development. The conscious mental life and the bodily life are species of the genus life.

SEC. 1.  
The organic  
law in  
mental  
processes.

The growth of the organism is a change from a condition of homogeneity to a condition of heterogeneity by increasing differentiations and increasing unifications. The advance in heterogeneity is accompanied with an advance to a completer organic unity. The law of organic growth—a continuous change from indefinite incoherent homogeneity to a definite coherent heterogeneity of structure and function through successive differentiations and integrations has its parallel in the growth of the human knowledge from dim hazy homogeneous consciousness to fuller and perfect knowledge by differentiation and assimilation. From primitive dim hazy consciousness, percepts and concepts are extracted ; from percepts, the sensations are extracted. The conscious and deliberate process of comparison involves analysis and synthesis. We analytically resolve the presentative complexes of our concrete experience to find certain relations among them, which relations unify the knowledge.

A concept may be singular or abstract or general. Singular concrete concepts such as Socrates, this table, refer to single objects of concrete existence. The process of individualising it, involves the cognition that it is persistent and continuous but this cognition is effected by subconscious automatic thinking. Abstract concept is obtained by generalizing an aspect or a attribute of a thing, as, redness. The general concept is obtained

by generalizing an attribute or attributes, with reference to a class included in the denotation.

Every general concept including a class is organic in its nature, the individuals being the particulars—the common element giving an organic unity to the particulars. In every department of knowledge, with greater and better knowledge of particulars and details, a better knowledge of the laws controlling the life of the particulars develops. The law of living growth of knowledge in every department seems to follow the movements of growth of organic life.

Discrimination, analysis, differentiation, mean the same thing; it is a discovery of dissimilarity among particulars; it is increasing the number of individuals. Assimilation, Integration, synthesis, mean the same process of unification; this unification is by finding something similar in all individuals—something common in all individuals. When by this common element a new knowledge is assimilated to old knowledge, it is apperception. These two movements are necessary for growth of knowledge. Every general idea has a sort of organic individual vitality; with increase of experience, through a process of discrimination and assimilation, it increases its kingdom. Differentiation and assimilation are aspects of one organic thought-activity, operation of one being promoted by the operation of the other. The proper knowledge of individuals implies general knowledge; general knowledge is impossible without knowledge of individuals. The law of possibility of knowledge by unity in variety and by variety in unity, and the law of growth of knowledge by higher individualisation and deeper generalisation, constitute the organic law of mental processes. In its working any part of the work may be done by the subconscious mind and any part may be done by the conscious mind.

The law of recollection through similarity implies a perception of similarity or unity and means only bringing to consciousness a particular individual member sharing the common life of the unity perceived.

The Law of assimilation or unification working in the subconscious mind appears as the law of revival through intellectual similarity, but working in the conscious mind, it evolves the partially organized knowledge of the sciences and the completely organized knowledge of Philosophy.



The Law of differentiation or discrimination working in the subconscious mind operates as the law of revival through dissimilarity.

Recollection through laws of intellectual similarity and intellectual dissimilarity are only subconscious processes of intellectual activity, of which the results appear in consciousness.

Every emotion, every impulse, every belief has a sort of individual Personality and its interest. Its interest is its self-preservation and self-development. For this purpose, it tends to gather round it, all those past experiences which support its self-existence and self-advancement. The law of revival through emotional similarity is nothing but the operation of vital force behind each emotion, each impulse, for its self-preservation and self-advancement. Each such living force tries to evolve a sort of organic life in the mind. Struggle may take place between two such organic complexes; when the self identifies itself with one, the other seems like an external assailant.

The ideal of a properly-evolved mind is to have an organic unity of all the particulars of that mind; but the whole mind in most cases cannot realise this ideal. The common life-force of each living man appears as split up into various particular forces, of which the impulses and the emotions are some; but the common life-force does not always succeed in working out a harmonious unity among all of them. Intellect seeks unity among all our ideas. But each impulse or emotion has its end, and its object is to fulfil the purpose of that end. It does not care for others. Whenever there is not sufficient opposition, each impulse or emotion realises itself. The lower ones may fail to be subordinated to the higher ones. This shows how in character, a man may become a system of contradictions.

The growth of various complexes in each mind, behaving like so many different Personalities and showing that in a sense the single human Personality is an organic unity of several Personalities, is also in conformity to the organic law in mental processes.

§ 2. (1) The law of Transference in its operation relating to feeling may be stated thus: If one of a *group* of contiguous

SEC. 2.  
The law of  
Transfer-  
ence.

or similar percepts, images and concepts, excites a special feeling, by the law of transference, the other percepts, images and concepts tend to excite the same. The operation of this law implies an uncritical feeling of unity of individuality in the group. The mind uses the law of assimilation or apperception in a blind uncritical way through the guidance of a vague misty feeling of unity and identity.

The result of operation of this law of transference, may be harmony with the real objective order of things or may not be such harmony. Where the feeling aroused by an individual of a group, springs from an attribute common to each individual of the group, the law of transference agrees with reason. But the very nature of the operation of the law of transference is that it is a work of subconscious mind and works uncritically without using the procedure which reason would dictate. It may lead to truth as well as to falsehood, to good conduct, non-moral innocent conduct, bad conduct.

Under the law of Transference, people get a love for their home villages though others may dislike these places. The lover transfers his love from his lady love to her clothes, furniture. If a person has a very unpleasant experience of a place he comes to dislike the same.

Under operation of this law, a person if unjustly attacked by a Journalist, may come to feel an aversion against all Journalists of the particular class ; a person deceived by one or two persons of a community, may feel an aversion against the whole community.

In a society composed of classes, castes, races, religions, of different colours, the individual should be very alert against the baneful operation of this law, in developing a feeling of antagonism against a class or a caste or a race or a religion or a colour. An individual having been dealt by only one or a very few persons of a group as to rouse a feeling of hatred or a feeling of animosity, may be led to hate or to feel animosity against the whole group ; and the hatred or animosity of the individual may be communicated by contagion to his friends and associates belonging to his group.

The best cure in such a case, is personal social intercourse with a large number of members of the group against whom the wrong feeling may arise ; such intercourse will show that



there are many good persons in the group and will make the individuals of the group realities and take away the vague unity and individuality of the whole group from the consciousness. Judges should be on special guard to protect themselves from subconscious growth of prejudices through operation of law of transference. These prejudices may incapacitate a judge from discharging judicial duties properly, in certain classes of cases.

*If a percept, image or concept excites a certain emotion, through operation of the law of transference, a percept, image or concept resembling it, tends to excite the same emotion.*

This explains our feeling at first sight towards a person. The very sight of a person, at first sight, may excite love or hatred, attraction or repulsion, sympathy or antipathy, fear, or reverence or respect or tenderness or anger. In most of these cases, the revival of memory of object of similar feeling takes place not distinctly but coalesces with the present memory; the emotion thus operates as a spontaneous immediate flow.

(2) *The law of Transference in its operation relating to conduct*, tends to evoke similar behaviour relating to similar persons and objects in similar circumstances. The operation of this law may be obstructed by other emotions or impulses, but nevertheless this law is a law of our conduct. From this motion of the Human Mind, the equitable principle of equal treatment under identical (*i.e.*, similar) circumstances, has come into existence; the conduct implies the principle and follows the principle, though the operation sometimes fails on account of counteraction of some other impulse or impulses or on account of wrong judgment about the circumstances.

(3) *The law of Transference in its operation relating to intellection*, tends to cause similar thought-response relating to similar things or similar circumstances.

As thought, feeling, conation are only aspects of the same organic mind, the law of transference in actual operation in real life, involves operation of the law in its intellectual, feeling and conative aspects, each aspect coming into prominence according to the stage that might come in mental life. The principle of equity springs and draws strength from the native constitution of the Human Mind. Conflicting emotions and



conative tendencies tend to prevent its operation, in the personal affairs of the individual. But relating to other person's affairs, opposition of conflicting emotions and conative tendencies is often much less and is absent in very many cases.

Judges sometimes feel against a party or a witness, or in favour of a party or a witness, guided by this sort of transference of feeling. A party's face may resemble the face of one whom the judge knows to be a scoundrel; the judge may subconsciously feel the party to be a bad man. The countenance of a witness may resemble the countenance of one whom the Judge knows to be a cheat and liar; the judge may spontaneously be led to disbelieve this witness. A witness may resemble a person whom the judge respected and revered when alive or whom he still respects and reveres, if alive. The judge may automatically believe the witness. An accused may resemble some object of deep affection of the judge. The Judge may come to possess an unconscious bias in favour of the innocence of the accused. The accused may resemble a person whom the judge habitually hates. The judge may come to possess an unconscious bias against the accused.

There are judges who think that the spontaneous emotional and intuitive impressions if any, caused by witnesses, parties, accused, are important guides in arriving at a decision. But every such judge runs the risk of becoming the victim of some unjustified prejudice which may lead to miscarriage of justice.

No doubt there are judges who from observation of the various motor manifestations and organic disturbances of a witness during his deposition, may make some intuitive inference about credibility of the witness, by influence of his past experience operating as a whole through the judge's subconscious mental activity; but the subjective certainty of the Judge relating to these intuitive judgments, though sometimes leads to truth, sometimes also, leads to error. The greater the previous experience of the Judge about witnesses of the particular class to which the particular witness belongs, the greater the perceptive power of the judge to watch and discriminate the various motor and organic disturbances of the different states of mind of the witnesses, the greater his retention and reproduction and his capacity to evolve correct intuitive inference on their basis—(through operation of the

Judge's conscious and subconscious mind), the greater is the chance of his making a correct intuition. But many of these intuitions are often only Judge's unjustified prejudices.

There are motor and organic manifestations which may be clearly grasped and from which the falsity of a witness's evidence may be inferred consciously with more or less probability.

§ 3. The Law of like response means that a bodily state or process suggests a similar bodily state or process, and a mental state or process suggests a similar mental state or process. The law of like response when giving rise to bodily states and processes similar to states, processes of some other body or bodies is the *law of imitation*; but when it gives rise to mental states, or processes similar to mental states or processes of some other mind or minds, it is the law of sympathy. The body or mind which responds acts like a string vibrating like another string. This law is at the basis of all sorts of common life among bodies of men in society. The capacity of one body or one mind to have a state or process similar to state or process of another body or mind or other bodies or minds implies a similar structure in the make of the body or the mind. This unity of the different bodies or different minds in having a similar constitution, is the basis of the operation of this law. A stone can not feel hate when a number of persons sit there, full of hate or express hate at that place.

Sec. 3.  
The law of  
Like Res-  
ponse (Imi-  
tation and  
sympathy).

Not only similar bodily and mental states but feigned mental states are reproduced under the law of like response. The mental states of others may be conveyed through all the various ways of communication to other minds and then the law of like response comes into play.

The very essence of art is the communication of the emotion of the artist to the persons who enjoy the artistic production; the work of art is the objectification of the artist's soul, and by suggestion it reproduces in the minds of others the artists' subjective emotions. Count Tolstoi says:—"Whereas by words a man transmits his thoughts to another, by means of art he transmits his feelings. The feelings with which the artist infects others may be most various—very strong or very weak, very important or very insignificant, very bad or very good: feelings of love for native land, self devotion and



submission to fate or to God expressed in a drama, raptures of lovers described in a novel, feelings of voluptuousness expressed in a picture, courage expressed in a triumphal march, merriment evoked by a dance, humour evoked by a funny story, the feeling of quietness transmitted by an evening landscape or by a lullaby or the feeling of admiration evoked by a beautiful arbour—it is all art."

Art exerts its influence through operation of the law of like response. Through the bloodless peaceful operation of this law, Humanity shall have to win its noblest victories, shall have to make the highest thoughts, emotions and habits of the best members of the Human Race, the customary and every day thoughts, emotions and habits of every man and every woman.

Human mind acts upon Human Mind through suggestion imitation and sympathy.

James Mark Baldwin in "The Individual and society" using the term "imitation" in a wide sense, speaks thus: "*Imitation is another great socializing function*; The child naturally falls to imitating, and when once this has begun he is a veritable copying machine, turning out acts, opinions, decisions, which are based with more or less correctness upon models found in his social environment. By imitation, he gets the "feel" of things that others do and so learns to value the safe and sane; by imitation, he tries on the varied ways of doing things, and so learns his own capacities and limitations; by imitation he actually acquires the stored-up riches of the social movements of history; by imitation, he learns to use the tools of culture, speech, writing, manual skill, so that through the independent use of these tools, he may become a more competent and fruitful individual; finally, it is by imitation in the way of varied and effortful trial that he succeeds in being original and inventive. \* \* \* Imitation to the earnest intelligent imitator is never slavish, never mere repetition; it is, on the contrary, a means to further ends, a method of absorbing what is present in others and of making it over in forms peculiar to one's own temper and valuable to one's own genius."

In the organic human body, the cells are dying and new cells are taking their places; and the unity and continuity of organic life goes on. In the social body, the individuals die and the



new individuals born take their places. But the identity and continuity of social life is maintained by a continuation of habits, customs, manners, traditions, ways of thinking, feeling and acting. This continuity is kept on through the operation of the law of like response, the law of habit, through education and social instinct. Those who are born learn the ways of thinking, feeling, acting of those who came before them.

(1) Imitation may be called organic sympathy. It brings an agreement of motor tendencies. The external movements are easily imitated and spread rapidly. Crowds of Penitents stripped to the waist and scourging themselves with leather thongs appeared in 1260 in Italy; then this movement spread over Europe. About the year 1370, the dancing mania spread through European cities. The sankirtan motor manifestations among Baisnabs in Bengal are very infectious. All our ways of eating, drinking, bathing, dressing, the nature of our residences, our conveyances are controlled by the law of imitation. The suggestion may come from a perception or an idea. The perception may be conscious or subconscious. The bodily reaction may be innate or may require to be learnt or may be partly innate and partly acquired. Imitation may be reflex automatic and spontaneous; or conscious and deliberate. Imitation appears early in the child at fifteen weeks (Preyer) or four months (Darwin).

What is imitated operates as a suggestion upon what imitates.

Among gregarious sheep, imitation is so strong that if a flock be driven through a narrow path and the leader be made to jump over a stick held across the path, every sheep of the flock will jump at that place even if the stick be taken away. In the world of fashion, men and women often follow like sheep the leaders of the fashion. M. Tarde says: "Whenever there is question of contracts, services, constraints we have to do with imitation. When man speaks, prays, fights, works carves, paints, versifies, he does nothing but makes new examples of verbal signs, of rites, of sword-blows or gunshots, of industrial or artistic processes, of poetic forms, of models—in a word, objects of his imitation, spontaneous or obligatory, conscious or unconscious, voluntary or involuntary, intelligent or sheepish, sympathetic or odious, admiring or envious, but

imitation always. It is the best touch-stone for distinguishing what is social and what is vital. All that a man does without having learned it by the example of others—walking, crying, eating, loving even, in the grossest sense of the term is purely vital; whilst walking in a certain way, in gymnastic step, waltzing, singing an air, preferring at table certain dishes of one's own country, and behaving there properly, courting according to the taste of the day a fashionable woman, all this is social. The inventor who inaugurates a new species of action, such as weaving by steam, telephoning, moving a carriage by electricity, performs himself a social work only in so far as he has combined old examples and in so far as his combination is destined to serve as an example itself."

The more immediate, less voluntary, and sometimes reflex imitation decreases as the child grows up while the dramatic form of imitation in play increases.

The principle of imitation makes our habits and ways of living, our speech, our manners and our conduct conform to the conduct of those around us. The evil results of bad example and the good effects of good example are illustrations of the application of the principle of Imitation.

Th Ribot Says :—" To sum up, sympathy is originally a property of living matter ; as there is an organic memory and an organic sensitiveness being those of the tissues and ultimate elements which compose them, there is an organic sympathy, made up of *receptivity* and *imitative* movements."

(2) In the mental imitation in which sense "sympathy" has been used here, the mental state roused seems as a reflection of the mental state of other mind, though the first one rises from the mind in which it exists. Sympathy is non-moral. Good and bad mental states may be roused under this law. One envious mind suggests envy in another mind. Malice in one mind suggests malice in another. Emotions which have bodily expressions are quickly imitated. Through operation of this law one saint creates other saints ; one thief other thieves ; one robber other robbers ; one sensualist other sensualists. Pure unaided sympathy by itself can not deliver a man out of egoism save by rousing up altruistic emotions. There are persons who keep themselves away from sights of slaughter of animals to avoid sympathetic pain



when those animals are being slaughtered for their table. Sympathy by itself does not move one to remove misery.

The Law of sympathy operates with greater force, the greater the likeness of the individuals in their mental constitution, relating to the matter of the sympathy. The Law of sympathy by its operation creates common feelings, common impulses and common ways of thinking and common ways of conduct.

But a community of thinking, feeling, acting may spring from a different source. A number of individuals may be so situate in life, that relating to a certain subject-matter, each of them has the same sort of self-interest; in such a case, each may think feel and act in the same way relating to the same matter, each guided separately by his self-interest. Here common objective circumstances make the self-interest of each of a number of persons identical.

A common life in thought, feeling, action may take place from (1) self-interest of each under common objective circumstances and from (2) sympathy in which under the law of like response, the mental condition of one is repeated in others. The 1st cause is the force of objective circumstances; the second cause is the interaction among different minds. In practical life, often, both these causes combine to produce a result. The impulse which induces one to put himself in the position of another and to judge him from that standpoint, the impulse which induces one to feel for and remove all sorts of suffering, imply not only the operation of the law of like response but also the operation of an altruistic ethical impulse to seek the well-being of others. The altruistic ethical impulse involves the operation of law of transference in cognition and in conduct. The impulse which induces one to put himself in the position of another and to judge him from that standpoint and the impulse which induces one to feel for and remove all sorts of suffering are sometimes expressed loosely by the term "sympathy". "Sympathy" in this loose popular sense, for its expansion, depends upon memory, inference and imagination; upon a vivid realisation through imagination of remote men remote places and remote circumstances, and upon detection of their similarities to what one is familiar. The Law of Transference operates through similarity. The detec-



tion of this similarity is the work of intelligent imagination which works in scientific discoveries.

SEC. 4.  
The operation of the law of like response in crimes and in suicides.

§ 4. Bodily and mental imitation is a fruitful source of crimes and suicides. In the ways of committing crimes, custom is respected. When an inventor invents a new way of performing a crime, the extension of that form depends upon extension of knowledge about it. The wider the circulation, the greater the chance of securing new converts by way of imitation. In suicides also, respect is paid to customary ways. But a new invention however violent if captivating to feeling, may be imitated. Recently in Bengal, a female committed suicide by burning herself after soaking her clothing with kerosine oil; she soon found followers in that new form of committing suicide.

SEC. 5.  
The force of examples and concrete ideals.

§ 5. In every department of practical life, greater power is obtained by following living or dead personalities and imaginary ideal personalities than mere abstract rules. Every real concrete personality or an imaginary typical personality works through the strength of the law of like response.

SEC. 6.  
Multiple Personalities in the same human Personality.

§ 6. Multiple Personalities in the same Human Personality. The springs of all human behaviour are in the conative tendencies (either primitive instincts or complex instincts or derivative tendencies to action). Each conative tendency in its feeling aspect is an emotion, the emotion and conation being aspects of the same reality. Every such conative tendency has got a system of ideas associated to it, which are favourable to the self-preservation and self-advancement of the conative tendency. Each emotion-tinged system of ideas with its conative tendency, forms a sort of personality which has its feeling, intellection and will. Each conative tendency in realising itself through the general will for the Human Personality, for the time being becomes the general will, and the whole complex (with emotion, conation and ideas) for the time being becomes the Human Personality. Each concrete Human Personality is one organised system of such personalities or complexes. But in no man, this organisation of the different complexes or personalities is complete; this organisation in individuals may be superior or inferior to that of the normal man. In hysteria, in hypnotic states, there may be temporary disintegration of one or more complexes from the whole co-ord

nated organised group called the Personality; in insanity, there may be a permanent such disintegration.

Different complexes may fight and then even in normal man, two conflicting complexes may live and operate—each by keeping itself confined within certain circumscribed limits. In such a case, the same man may behave in dissimilar ways under similar circumstances in different spheres of life or towards different persons. In the conflict, one of the complexes may become repressed and may live in the subconscious life and only symbolically appearing in hysteria or in dreams. By a process of deliberate ratiocination a harmony may be worked between two complexes by which their value and position are determined and they become members of the coordinated organised system of complexes of the whole Human Personality. A state may have large dominions but the co-ordination and organisation as among the different parts may be of various degrees; similarly the co-ordination and organisation of the different complexes that constitute a Human Personality may be of any degree.

Every emotion or complex tends to repress a rival emotion or a rival complex. As regards repression by emotion, Dr. Morton Prince says:—"in every day life, it frequently happens, when dissociation effected by an emotion results in an extremely retracted field of consciousness, that, after this emotional state has subsided and the normal state has been restored, memory for the excited retracted state, including the actions performed, is abolished or impaired. Even criminal acts committed in highly emotional states (anger, brain-storms etc) may be forgotten afterwards, in other words, in the normal state, there is in turn a dissociation of the residua of excited state." When a person returns to the normal state from a condition of extreme dissociation, the tendency is not to re-collect the dissociated condition.

§ 7. Tradition in the widest sense, includes the entire acquisition of a group of men in the course of its past history—manners, customs, agriculture, industries, learnings, arts, dress, food, literature &c. This whole mass of tradition embodied in thoughts, beliefs, opinions, institutions, ways of living &c—give the characteristic to each type of civilisation.

This tradition enjoys a continuous life, in spite of births and

SEC. 7.  
Like Res-  
ponse and  
Social  
Instinct or  
Herd  
Instinct in  
maintenance  
of Tradition.



deaths of individuals — through the law of like response working in cooperation with the social instinct or Herd Instinct,

When the individuality of a person becomes critical and deliberative the Herd Instinct preserves what is followed by the Herd, and takes away the authority of personal idiosyncracies and peculiarities that might have been followed before uncritically.

A type of civilisation is not innate in the individuals of the same but lives in the tradition and is imbibed by the individual through imitation, sympathy, suggestion, education. If a Brahmin baby just at its birth is accepted at an English family on the bank of Thames, as its member and grows up there, he will become a typical Englishman, while an English baby if just at its birth is accepted at a Brahmin family as its member on the bank of Ganges, it will grow up a typical Brahmin. But an individual baby can assimilate a foreign type of civilisation of the same level to which he belongs by birth. Dr. Mc Dougall says—"There is widely current a vague belief that the national characteristics of the people of any country are in the main innate characters.

But there can be no serious question that this popular assumption is erroneous and that national characteristics at any rate all those that distinguish the peoples of the European Countries are in the main the expressions of different traditions."

It is easier to imitate the modes of doing than the modes of thinking. The modes of doing in a tradition tend to show a stronger vitality than modes of thinking. The Law of Like Response is the great conservative agency for persistence of traditions; it becomes an agency of progress when a superior original mind originating any new line of thought or action is followed, or when a superior type of civilisation is imitated by a member of a lower type of civilisation.

SEC. 8.  
Law of  
suggestion.

§ 8. "Suggestibility" is an essential part of the constitution of the Human Mind; it is an essential attribute of the Human Mind.

"Suggestion" is the production in the subject's conscious or subconscious mind, a belief which tends to be uncritically accepted and automatically followed. Suggestion may come



from any source outside the subject's mind acted upon or from the subject's own mind. In imitation of behaviour of others and in thinking, feeling, willing similar to thinking, feeling and willing of others, the operation is one of the law of like response. The law of like response may operate without affecting the machinery of belief ; but law of suggestion works through the machinery of belief.

Dr. Mc Dougall's definition appears from the following: He says "The following definition will, I think, cover all varieties. Suggestion is a process of communication resulting in the acceptance with conviction, of the communicated proposition, in the absence of logically adequate grounds for its acceptance"

A mind can make suggestions to himself *i.e.*, auto-suggestion.

The law of suggestion is a complex law, being the resultant of the operation of the following laws :—

(1) Every statement of a judgment tends to produce a belief in its objective truth.

(2) Every sensory image tends to produce a belief in its objective truth *i.e.*, to develop into a percept.

Suggestion is a process of producing belief in the objective reality of statements made, without any use of the machinery of logical reasoning. The machinery of reasoning works by utilising our experiences ; it, thus essentially depends upon coordination or proper association of our experiences. The better the coordination, integration, association the better is the operation of ratiocination or logical reasoning.

On the other hand, suggestion from its very nature, works better in dissociation, disintegration. It is utilisation of the two mental laws :—(1) Every statement of a judgment tends to produce a belief in its objective truth. (2) Every sensory image tends to produce a belief in its objective truth *i.e.*, to develop into a percept. Reason is the control of our systematised coordinated system of knowledge on the operation of the 1st, of the aforesaid laws. The inhibitory influence of the objective real world in our proper wakefulness and the control of our systematised coordinated system of knowledge, prevent ordinarily and normally the operation of the second of the laws.

"Suggestion" can become successful and can have its unrestrained course under the following circumstances :—

(1) In dissociated states of mind, when the controls aforesaid are more or less or entirely withdrawn. Both the laws aforesaid can have then free scope. In hysteria, hypnosis, normal sleep, in the borderland states between sleep and wakefulness, fatigue, such dissociations happen. In Hypnosis, the subjects believe and act upon statements suggested. In dreams, in sleep, and in the borderland states between sleep and wakefulness, images may become percepts *i. e.*, hallucinations. In hysteria, hallucinations may happen.

(2) When a person has neither any knowledge or belief positive or negative relating to a subject there can be no proper control of any suggested belief relating to such subject. Suggestion works better in such a field.

(3) Out of reverence or habit of obedience, the machinery of criticism may not more or less come into play, when suggestions come from persons enjoying prestige or habitually revered, respected and obeyed. Suggestions have better scope under such circumstance.

(4) There are persons who in certain departments of life more or less extensive, always carry a meek, submissive uncritical mind. In case of such persons in such departments of life, suggestions can have better scope.

The machinery of suggestion is a mechanical machinery of non-reason.

Whatever prevents the rushing-in of associations necessary for logical reasoning, helps operation of suggestion. This may happen in dissociation or tendency towards dissociation as in the following cases :—

(a) Imprisonment of attention (b) Distraction of attention (attention to something irrelevant) which prevents watchfulness of the critical faculty. (c) Monotony which brings sleepy condition. (d) cessation of voluntary movements which help and intensify our sense of individuality. (e) Narrowing of the field of consciousness. (f) A condition of keeping the mind a blank.

The law of suggestibility may be stated thus :—

Suggestibility varies directly with the degree and extent of dissociation, and inversely with the integration and association of consciousness.

In conscious normal life, suggestions can avoid the

intervention of the controlling machinery of the mind, by entering the mind in a stealthy, indirect way, in masked shapes. But in dissociated states of consciousness, the direct suggestion being more or less unopposed or being never opposed, is more efficacious.

§ 9. John H. King in his "Man an organic community" says:—"According to a report in the London Medical Times, four Russians, condemned to death, were, without knowing it, put to sleep on beds whereon persons had died of the cholera but they did not take the disease. Subsequently they were told they must sleep in the beds of cholera patients, with the result that three took the disease and died in a few hours. There are several analogous cases in the Contemporary Review." \* \* \* "All the virtue in charms, in patent medicines, in the royal touch, galvanic and hypnotic healing, and the power of relics, lies in the *self-suggestive power* concentrating the mind, and through it the recuperative energy on the failing powers of the coordination." \* \* \* "The same power of suggestion that deprives the human faculties of their ordinary energy has, in more favourable influences, become curative. Witchcraft, magic, illusions of evil influences, ghosts, devils, and the evil eye, all forms of fascination, all paralyzing premonitions, all suggestions of loss and degradation according to the extent that they represent the failure of the energy are productive of evil. Such emotions can be so intensely disordinating as to paralyze the brain and even stop the heart's action so long that it fails to recover tension,' \* \* \* "In less degrees of emotional disintegration, the mental suggestion in the mind deranges, in innumerable ways, the coordination \* \* \* fear not only suggests a vague sense of dread affecting any faculty or power but induces hallucinations and illusions of every sense, even volition may be powerless. \* \* \* Aphasia and agraphia may be induced by fear \* \* \* "of the vast influence of this capacity to retain suggestions and to recall them a-consciously as supernatural power of expression we have now to observe. A very simple illustration of this retention of suggestion is the very common faculty possessed by men on going to bed to will to re-awaken at a certain definite hour." "Mental suggestions may be conveyed through any of the senses—for instance, through the muscular sense—

SEC. 9.  
Views of  
J. H. King



by placing a limb in such a position as to suggest an act, and the subject spontaneously completes the act so suggested. So by sight and touch: give an umbrella to a somambulist, and he will open it; a knife and bread, he will cut it and eat it; knitting needles and she will knit" \* \* \* "volumes might be written on the modes by which medicine men, faith healers, and other enthusiasts, have so gained the power of suggestion over the minds of the sick and infirm as to induce the full bearing of the vital energy on the discordination. If the derangement lies within the range of the selfcurative power, then a favourable result may ensue" \* \* \* "Historical evidence of faith healing is of the most voluminous character and is presented to us not only by every savage but more or less by races of men in every stage of civilisation."

SEC. 10.  
Volume of  
suggestion  
and sugges-  
tibility of the  
mob.

§ 10. Every suggestion has a certain force. When the suggestion comes from a very large number of bodies or a very large number of minds, its effect may become irresistible. In ordinary adult life, we may throw away thousand suggestions pouring from all sides but when the suggestion comes from the general public as public opinion, it may be of too powerful strength for resistance to many.

The foolish deeds of mobs under excitement, when the majority develop a semi-hypnotised condition, are not directly cases of strengthening of suggestion from cumulation of suggestions. In this case the majority are reduced to a helpless semi-hypnotised condition when the suggestions of one or a very few or from an event or circumstances are automatically acted upon. From a mere gathering of people, under proper conditions of excitement, fixation of attention, a semi-hypnotised condition develops in a body of men who become a mob in each of whom the whole mind ceases to act; the mob mind unable to judge, uncritically believes the suggestion or suggestions of the demagogue or demagogues or suggestion from any event or circumstance and proceeds to act as suggested. The strength of social customs, usages, traditions, is in the cumulative effects of many suggestions. But after the suggestion had been accepted by a party the force of cumulation of suggestion comes to play. Customs and usages are ways of doing; tradition is a way of thinking or believing. Customs have a greater mass suggestion than usages. Customs and traditions

have greater mass suggestion than new ways of common believing and common acting.

The social Instinct called by Mr. Trotter "Herd Instinct" with the operation of law of like response and force of mass suggestions makes the individual uncritically without question accept the beliefs of the herd or society and to follow the rules, manners, customs, ways, habits of the herd or society to which he belongs by birth and education, automatically without any rationalisation or criticism. This instinct is only a creative force operating in the individual to make him a part and parcel of the social organism to which he belongs. When a large body of men meet for some common purpose, for the time, they form a sort of one personality in which the individual members are merged as constituent elements. The gathering must be under some common impulse or for some common purpose. A mere crowd of men having no connection, under some sudden emotion, may get a unity and a personality. In such a body, the herd instinct of each individual comes into play, and for the time, each tends to lose his individuality. The mind of each individual tends to become preadjusted in favour of the common interest. Such a condition tends to put to sleep critical faculty and tends to make the mind of each strongly suggestible to accept anything seeming to favour and promote the common cause. The expectant attention causes a limitation in the field of consciousness, somewhat inhibits movements; the common attitude of a large number of persons produces an atmosphere of monotony.

The mob-self has an individuality; it rises by putting to sleep as it were, the individual critical awake selves; the uncritical self which blindly obeys and follows a common impulse becomes predominant in each.

The mob tend to accept the mobleader's suggestions without criticism, but the suggestions should be in the direction of the mob-mind. The common mob-mind that develops can not however go against the deep and fixed conative-emotional moral character of individuals. The tender and gentle soul of love can never be made to commit some cruel murder by any sort of suggestion of the mob-leader. The mob-atmosphere develops the seeds that exist but can not bring out things that have not seeds in the mind.



SEC. 11.  
Value of  
counter-  
suggestion.

§ 11. A responsive activity always takes place in case of a suggestion under the law of like response, unless there be a counter-suggestion. Under this law, the man acts like a machine under a suggestion in absence of a counter-suggestion. The question of deliberation choice, selection arises only when there is a counter-suggestion. But for counter-suggestions old customs and old traditions would have reigned unmolested for ever.

SEC. 12.  
Some  
instances of  
operation of  
suggestions.

§ 12. Every suggestion is a force; every suggestion when it fails to produce a complete belief, affects the mind to some extent remaining in the mind as a positive force; on any future occasion of dissociation, it may emerge and may produce injurious effect.

(1) The appearance of an accused hand-cuffed under Police escort suggests that he is a guilty person. This very sight produces in many minds a semi-belief or a full belief that he is a guilty person. There are judges of such badly-balanced minds to whom such a very sight produces a semi-belief in the guilt of the accused; they consider evidence with a mind predisposed for a finding of guilt. Hans Gross says: "The appearance and the surroundings of the prisoner influence many, and not merely uneducated people, against the prisoner and they think, involuntarily, "If he were not the one, they would not have him here."

(2) The mere fact of bringing a criminal charge against a person in a criminal court, may, without any further fact produce in some minds a belief about the truth of the charge. If a false complaint is made against an innocent person in a criminal court and this fact be published in the papers, some of the readers of this information may believe in the guilt of the accused, without any further information. Many newspaper readers maintain a passive receptive uncritical attitude in reading a good deal of matter and in that mood some suggestions from newspaper writings may produce semi-belief or if they fit in with the predisposition of the mind of the reader, they may produce complete conviction without any logical justification. Many people find their feeling and conduct towards some innocent person falsely charged with a crime and acquitted, spontaneously and automatically made different from what they had been before the making of the charge. This mental change



is the result of operation of the suggestion produced by the charge and the trial.

(3) If administration of Justice only on evidence elicited during trial is desired, it is necessary that a Judge's mind should be guarded from every sort of communication relating to fact to be proved before him, other than what comes to him during the course of the trial. Every communication has suggestive power, and if it proceeds from a person whom the judge respects or ordinarily and habitually believes, the power of suggestion will be greater. Every conscious effort of the judge to be strictly impartial and to dispose of the case only on the evidence produced during trial, is no safeguard against production of any subconscious bias incapable of detection by the judge himself.

(4) The majority of the human race have a tendency to believe all statements contained in printed books or in printed periodicals of the party to which they belong. Printed books and printed periodicals enjoy such prestige in the eye of those men, to whose party they belong, that all statements made therein are believed by the majority of such persons uncritically and automatically. The party bias strongly helps to disarm criticism ; and this added to a habit of respecting printed material, produces a mental attitude in which dissociation takes place.

(5) During hearing of cases, statements are sometimes made by parties or their pleaders in proof of which no evidence is adduced. But if any one or more of these statements be cleverly made in some opportune moment as to fit in with the course of events or if they fit in with the mental expectations or predispositions of the judge, these suggestions though absolutely wanting in evidence, may sink deep into the judge's mind and become operative forces there, and may sometimes decide the fate of a case. Advocates standing high in the estimation of the judge, by making statements in a dramatic and impressive manner or in some opportune moment, through high suggestive force of them, may sometimes secure for them a practical value which they being unsupported by any evidence do not possess.

To estimate evidence properly requires capacity which increases with training and constant practice. A person accustomed to estimate evidence in one department of life, may not

show the same degree of efficiency in another department of life. In jurytrials, on many occasions there are Jurymen who have not the requisite efficiency, for proper estimation of evidence. The imagination and feeling of such jurymen may be easily captivated by persuasive oratory and the whole evidence may be presented before them in a light which is not logical but which is potent for securing a belief which the advocate desires to get from them. In such a case, a trained judge should try to present the whole evidence in a true logical form and to point out any pitfall where such a juryman may trip.

SEC 13.  
Influence of  
Prestige.

§ 13. Suggestions proceeding from person enjoying prestige have strong power. The opinions and beliefs of classes who enjoy prestige become the opinions and beliefs of the people. Ideas spread when they emanate from a person of Prestige and when they fit in with the attitude and nature of the people for the time being.

SEC 14.  
The triple  
laws of non-  
reasoned  
activity.

§ 14. In understanding the operation of the triple laws of non-reasoned activity—Transference, Like Response, Suggestion, it should be remembered that the human mind is complex and has many springs of activity. In actual operation, these laws are mere tendencies. The operation of each law may be counteracted by other mental cause or causes. In many cases the operative tendency of a law may be suppressed entirely in the sub-conscious mind and an opposite reaction through the operation of an opposite mental cause or causes may appear in the conscious mind. Instead of following a suggestion or imitating or having sympathetic response a mind may proceed a contrary way. *Reason, in practical life, is the intellectual capacity of regulation of Behaviour in the light of experience of consequences, the consequences being judged from the standpoint of any conative impulse or Ideal of conduct followed by the actor.*

## CHAPTER XII.

### HUMAN BEHAVIOUR.

§ 1. Behaviour is creation. Human Behaviour is manifestation of creative activity through human organism. Objective behaviour has counterpart in the subjective mind, conscious or sub-conscious. This subjective activity is either self-originated or is in response to environmental stimulus. What has been called the law of spontaneous variation always leaves room for departures from anticipated behaviour and for surprises. For every particular act of behaviour, the corresponding mental counterpart is treated as a cause ; but the full content of this mental counterpart is more than that of a mechanical cause. The use of the language of mechanical causation in mental causation of Human Behaviour should be regarded as a symbolic use of language. Mental causation of Human Behaviour is different in kind from mechanical causation of the world of extended matter. The force behind Human Behaviour is the affective-conative nature of man. To understand Human Behaviour, we should go underneath and tap the springs of impulses and feelings from which they well up.

SEC. 1.  
The springs  
of Human  
Behaviour.

§ 2. Feeling is the passive affective aspect of consciousness. For the purpose of this chapter, the feelings are divided into (1) feelings of the special senses of External Perception (2) Emotions *i.e.* feelings other than the feelings of the special senses of external perception.

SEC. 2.  
Feeling  
emotion,  
sentiment.

Various meanings can be given to the expression "emotions" according to the way in which you define the same.

(1) The term "emotion" can be made identical with the term "feelling."

(2) Professor James defines an emotion to be a tendency to feel and an instinct to be a tendency to act characteristically,



when in presence of a certain object in the environment. Professor James says: "Every object that excites an instinct, excites an emotion as well. The only distinction one may draw is that the reaction called emotional, terminates in the subject's own body while the reaction called instinctive is apt to go further and enter into practical relations with the exciting object." "The feeling in the coarser emotions results from the bodily expression,"

(3) Emotion can be conceived as the result of thought activity, the feeling-aspect of our thought of the way in which we may be affected by things.

(4) In this chapter we confine the term "emotion" to all sorts of feelings other than feelings of the special senses of External Perception.

(5) Sentiments, we include under the general class of "emotion". According to Dr. McDougall a "sentiment" is "an organised system of emotional dispositions centred about the idea of some object". According to Dr. Morton Prince, a sentiment is "idea of an object with which one or more emotions are organised," The expression "sentiment" may be confined only to the emotions for the True, the Beautiful and the Good; or "sentiment" may be said to be every self-conscious emotion or a self-conscious organised group of emotions *i.e.*, emotion or emotions conscious of its or their object; or "sentiment" may mean an organised system of emotional dispositions centred about the idea of some object.

SEC. 3.  
Psychical  
appearance  
of the  
Emotion.

§ 3. An Emotion may appear in one of the following ways:—

(A) First comes the conscious knowledge of the object and the conscious perception of its relationship to self (2) next comes the emotion (3) lastly, comes the impulse to action or conation.

(B) First comes the conscious knowledge of the object and the consciousness of its relationship to self. Next, spring up at once emotion and conation simultaneously being the passive and active aspects of the same reality.

(C) First comes the conscious knowledge of the object then spring up at once the cognition of its relationship to the self, the emotion, the conation—all these being aspects of one and the same reality.

(D) The knowledge of the object and its relation to self do not enter consciousness ; from the subconscious plane, issue the emotion and conation simultaneously. Conation may be a mere impulse, a tendency to act not fully realised or the impulse and its full realisation.

§ 4. The creative activity (whatever its metaphysical ultimate nature may be) surging up in consciousness appears in the individual as impulses to activity. The passive conscious aspects of these activities are emotions. Desire is a self conscious appetite.

SEC. 4.  
Emotion,  
Impulse  
and Reason.

At its root, the original primitive impulses are independent of any conscious individual intelligence ; organic vegetative life appears before animal life ; organic life is directly expressed by the needs and the appetites. There are the myriads of animals which are only bundles of needs.

From the purely physiological point of view, knowledge appears not as a mistress but as a servant. The impulses to preserve life, and well-being and to propagate, are common to the polypus and to man. The will to live with the horror of death is anterior to experience, independent of intelligence. The simple and complex impulses with corresponding emotions rule the life of man ; intelligence serves them to show how they can be best satisfied with due regard to their respective claims. The ideals of Prudence and Ethical Ideal draw their dynamical motor power from the affective conative nature of man.

Dr. McDougall in Social psychology says :—"It is only through the systematic organization of the emotional dispositions in sentiments that the volitional control of the immediate promptings of the emotions is rendered possible. Again, our judgments of value and of merit are rooted in our sentiments ; and our moral principles have the same source, for they are formed by our judgments of moral value."

Dr. Morton Prince says :—"Summing up, then, we may say one of the chief functions of emotions is to provide the conative force which enables ideas to fulfil their aims, and one of the chief functions of sentiments to control and regulate the emotions."

The Reason supplies the light to self. Intellection is the activity of the self by which it compares, discriminates

assimilates, by which through the help of sense impressions it builds up the perceptions, which uses retention for preserving experiences, which recalls the experience through the laws of association and utilises experience in constructive imagination, in conception, in judgment and in reasoning; which utilises past experience to guide us in the future, which systematises knowledge in partial unification of sciences and complete unification of Philosophy.

The human mind energises through various tendencies to activity i.e. conative tendencies or impulses. Intellection itself is a form of activity and rests on an innate instinctive conative tendency which may be called the *Instinct of Intellection*. This instinct appears in various forms of minor instincts which may be different in different persons; and this difference in conative nature of intellection is one of the causes of differences in intellectual constitution. But in relation to the other conative tendencies, the intellect only supplies the light, the ways and forms of procedure, but is otherwise a mere cripple. The other conative tendencies produce behaviour in virtue of force in those conative tendencies. The other conative tendencies in their self-interest may stimulate the instinct of intellection to work for supplying light and guidance.

SEC. 5.  
Expression  
of Emotions.

§ 5. Expressions of Emotions are the external changes of the organism which can be perceived by an outsider; not only emotions but thoughts have their expressions; these are only particular cases of the wider law that every change in consciousness has corresponding motor change in the organism.

Organic sensations of expressions of emotion running together do not make up an emotion, which contains something more than them; the organic sensations become fused with the emotions.

(a) *The expression in the Face* happens from changes in the facial muscles and facial circulation.

(b) *The expression by the characteristic attitudes and movements*, happens from changes of the muscles of the limbs and of the whole body.

(c) *The expression by exclamations and outcries*, arises from changes in the muscles of the chest and of the vocal organs.



Lungs, heart, liver, glands, organs of secretion and nutrition and other organs are affected by the emotions. "Hack Tuke asserts it to be a matter of common observation that while the blush of shame begins in the cheeks and the ear, that of anger begins with the eyes and that of love with the forehead" (Th. Ribot) Among communities where there has been much development of refined manners, polished people learn to develop a habit of concealing their real feelings. [This habit comes gradually to suppress automatically the external expressions of emotions which may prevail within and affect the inner organism.] In intercourse with others and in the witness-box, such well-refined gentlemen may present a pleasing unconcerned countenance while internally troubled with emotion.

§ 6. The following views about the relationship may be mentioned :—

SEC. 6.  
Relation of  
Emotion to  
its expres-  
sion.

✓ (1) The psychical emotion is followed by the organic expressions.

✓ (2) The sensations of the organic expressions, internal and external, fusing together, become the emotion. Emotion is the sum of the organic feeling external and internal of the organic motor manifestations of the conative aspect of the emotion.

✓ (3) On knowledge of an object or its recollection and of the relationship of the object to the self, in the conscious mind, there is an impulse ; sometimes the impulse comes at once from the sub-conscious. This impulse is mind-activity ; emotion is the feeling aspect of this mind activity or Emotions may be the feeling aspect of this mind activity and knowledge of the relation of the object to the self. The expressions are the result of the mind-activity upon the body ; the feelings accompanying the organic changes mingle with the feeling aspect aforesaid.

The close connection between an emotion and its organic expression is clear from the following facts : (a) an emotion can be controlled by controlling its expressions. (b) by artificially producing expressions of an emotion, an emotion can be produced. An actor with external manifestations of an emotion may not feel emotion owing to absence of internal organic expressions and in virtue of inhibition of a superior type.

SEC. 7.  
Specific  
organic ex-  
pression of  
each emo-  
tion.

§ 7. The study of the specific organic expressions of each emotion, is interesting. In slight trouble, contraction of eyes and brows may be found ; in momentary embarrassment something in the pharynx may cause a swallow or a clearing of the throat or a slight cough ; in fear there may be quickened heartbeats, shallow breathing, trembling lips, weakened limbs, goose flesh, visceral stirrings ; in rage, there may be ebullition in the chest, flushing of the face, dilatation of the nostrils, clenching of the teeth, impulse to vigorous action ; in grief, there may be tears, sobs, suffocation of the heart, pain in the breastbone.

SEC 8.  
Origin of the  
expressions  
of emotions

§ 8. It is unnecessary to discuss here the question of origin of the expressions of emotion. One way may be to try to trace them to remnants of action which were once useful, so far practicable. Expressions of sense feeling may transfer themselves to an emotion through the law of transference through similarity. An attempt may be made to find in some expression of some emotion a non-voluntary automatic only partially expressed reproduction of what our organic states, our attributes and actions would be under the circumstances, the thought of which yields the emotion.

SEC 9.  
Pleasure and  
pain, physi-  
cal and  
mental. Joy,  
Happiness.

§ 9. Pleasure and pain are qualities of feelings ; they are feeling-tones. A great deal of subjective experience is neither pleasurable nor painful. Every feeling is more than mere pleasure or pain. The question of value of a feeling is a different test.

Pleasures and pains may be physical or mental. The physical ones are of common organic sense and of special senses. The mental ones are agreeable or disagreeable forms of consciousness arising out of ideas and relations of ideas. They are joy, sorrow, happiness, misery, satisfaction and dissatisfaction. There may be mental joy in physical pain. Physical pleasure may be accompanied with mental misery. Joy, Happiness are abiding agreeable states of consciousness depending upon the organic harmonious operation of the permanent, abiding deeper, essential constituent elements of a personality. Development of personality in depth, extension harmony, means also development and progress of this joy and happiness. This happiness or joy can not be measured or calculated quantitatively but forms organic part and parcel



of the total organic personality being only an aspect. What is well-being, or good or perfection of this personality is also the joy and happiness, the self satisfaction, of the same personality only looked at from a different aspect.

Pleasure and pain depend upon the degree of the stimulation and the quality of the stimulation and are subject to the law of change. Change is favourable to pleasure ; undue prolongation leads to pain.

Repetition of disagreeable states may take away pain ; may make it indifferent and even pleasurable. *This is the law of accomodation.* From increase in degree and also from undue prolongation, pleasure may become pain. Law of accomodation helps a man to reconcile himself to his circumstances. Harmony is co-operation and leads to increase of pleasure. Discord is war and leads to decrease of pleasure.

Aristotle's doctrine of golden mean is this: pain consists in disuse and overuse of vital energy, while pleasure consists in exercise of a given supply of vital energy avoiding these extremes.

Th. Ribot says :—" The formula generally admitted since Aristotle, which couples pleasure with utility and pain with what is injurious, admits of many exceptions in practice." According to Th Ribot, the exceptions are numerous and require critical study ; that some can be explained and others seemed to him irreducible to any law.

Th Ribot says :—" It has been observed in general manner that the lower races are not very sensitive to pain. Thus Negroes in Egypt endure almost without suffering, the most extensive surgical operations (Pruner Bey) and Montegazza reports a large number of examples. In the peasant, sensibility is usually less keen than in the town dweller and it may be admitted without hesitation that susceptibility to pain increases with civilisation.

§ 10. Altruistic Love is an impulse which is different from the impulse to personal union with the object of love. This impulse to personal union may be called "the tender emotion." Th Ribot says, "The physiological expression of tenderness, so far as movements are concerned, is reducible to a single formula—attraction," "Embrace" is the developed

SEC. 10.  
Instinct of  
"Altruistic"  
Love  
Instinct of  
Positive self-  
feeling  
Instinct of  
negative  
self-feeling  
The herd  
Instinct The  
Instinct of  
hatred.



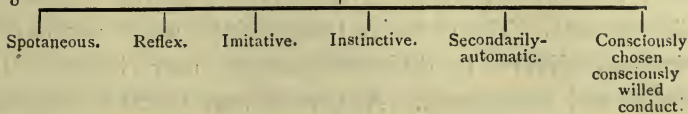
expression of "tender-emotion" "Tender emotion" is always present in Biological sexual instinct and in Biological parental love. The social love which prompts one to seek good of object of love, in actual operation is always in parental love ; and in many cases becomes associated with sexual instinct and tender emotion. Two instincts one consisting in assertion of self and another in negation of self, play a great part in social life. They may be called positive self-feeling and negative self-feeling. These two instincts more or less operate in all social organisations in which one part leads and the other part is led. The herd Instinct is the conative tendency which leads the individual to think, feel, act automatically and without criticism in conformity to those of the group to which he belongs by birth and education. The integrating cement of family life is to be found in biological sexual instinct, biological parental love, in social love, in a perception of a community of self-interest, in the forces that work the law of like response the law of transference and in negative and positive self-feeling. The integrating cement of social life is to be found in social love in the force that works the law of like response, and in what has been called the herd instinct in perception of a community of selfinterest and in the force that works the law of transference and in positive and negative self-feelings. The instinct of hatred may be roused against any sentient creature on consciousness that it behaved or is behaving or in future will behave in such a way as to go against the interest of something which the person feeling hatred values or on consciousness that it has some property which rouses hatred. From tradition, certain persons or animals may become subject of hatred ; from habit or through operation of sub-conscious mind, certain persons or animals may be hated automatically,

SEC II.  
Conation.

§ II. Conation is present in every consciousness as the activity of the mind, as aspect of the three aspects of consciousness. The activity of the self in producing change in the organic body, appears as *organic conation*. Through *organic conation* the purely subjective conation produces change in the external objective world of matter and of other minds. Conscious subjective conation is carried on through attention.

## Conations issuing in external conduct.

§ 12.

SEC. 12  
Classifica-  
tion of cona-  
tion issuing  
in external  
conduct.

§ 13. The spontaneous movements arise from blind spontaneous impulse to organic activity ; they spring from within, without any stimulation from without. They arise without any conscious purpose ; obstruction causes displeasure. They are at first irregular and may be irregular at any stage of life. When ever repressed, a feeling of uneasiness is caused and this feeling-stimulates the activity ; the actions then become sensori-motor.

SEC 13  
Spontaneous  
movements.

The blind impulse to expenditure of muscular energy inspires athletic games, gymnastic exercises and all sorts of play requiring expenditure of muscular energy.

§ 14. Reflex actions are actions which are reflected from within on the occasion of sense impressions from without. They are like return blows, answers to sense impressions from without. In these cases, a sense-impression is followed by action, without any intermediate thought or judgment.

SEC. 14.  
Reflex  
action.

The organs of organic life carry on their functions by way of reflex action. The organic reflex activity is modified by habits incurred by the organs. The stomach may secrete the necessary digestive secretions at the time one takes food even though one has not taken food.

When the original impression which rouses the reflex movement or the return movement appears as a distinct conscious experience, the reflex movement becomes a psychical one, *e.g.* (sneezing, coughing, a response to tickling a sudden avoidance of what gives painful sensation, winking). Sensation-motor, Perception-motor, ideo-motor activities are of reflex types ; there is a sensation and at once return action ; there is a perception and at once reflex action ; there is an idea and at once reflex action. Between sensation or perception or idea (image or a general concept) and the reflex action no other state of consciousness intervenes. Automatic attention to interesting sense impressions is reflex. In reflex activity, there is neither conflict nor deliberation nor choice.

§ 15. Imitative actions are blind or deliberate. Blind imitative actions arise out of a blind impulse to imitate ; simply

SEC. 15.  
Imitative  
actions.

to imitate is the realisation, without any conflict, deliberation, choice, conscious purpose. Deliberate imitative actions are deliberate acts. The capacity to reproduce what another has performed, differs in different persons, may improve from exercise and experience. A person may imitate successfully after some failures. But the capacity to imitate is an innate capacity to produce motor combinations and activities similar to those perceived or thought; and the capacity differs in different persons and admits of improvement by experience and education. The tendency to imitate uncritically and blindly whatever is done by the community to which one belongs by birth and education, is an attribute of the human mind.

SEC. 16.  
Instincts.

§ 16. An Instinctive action is (1) performance of a co-ordinated series of actions being the means (2) for carrying out an end useful to the individual or to the race (3) without any existence in the individual consciousness of the idea of the end or the idea of the means. If objection be taken to the expressions "for carrying out an end useful to the individual or to the race," instead of this expression, the following may be used "adapted to the use of the individual or the race" An instinct may appear in any period of growth of the individual.

Professor James says:—"Instincts are the functional correlatives of structure. With the presence of a certain organ goes, one may say, almost always a native aptitude for its use."

Instincts are fully developed in the Insect world. Animals show instincts in seeking food, in defence, attack, in construction and manufacture, in provision for the young.

In Man, instincts work as general impulses to activity the actions being adapted to the good of the individual and the race. These impulses do not arise out of consciousness of ends or purposes chosen, though their ends or purposes may be discovered by thought. The co-ordinated series of actions performed as means in the insect-world are not to be found in human instincts. The particular lines of conduct for the satisfaction of these general instincts or impulses are those to which the society has become adapted and which the child learns through experience, education and the operation of the law of like response, (Imitation and sympathy); the means for satisfaction of the instincts may be not only social customary means as prevalent and upheld by tradition but



also new means devised by the individual in the light of his experience. Man possesses the instincts of the lower animals and a great many more besides.

Professor James says:—"Man has a far greater variety of impulses than any lower animal; and any one of these impulses, taken by itself, is as blind as the lowest instinct can be; but owing to a man's memory, power of reflection, power of inference they come each one to be felt by him, after he has once yielded to them and experienced their results, in connection with a foresight of those results. In this condition an impulse acted on, may be said to be acted out, in part at least, for the sake of its results"

Impulses conflict one another in actual operation; the light of reason becomes necessary for their proper regulation in the light of experience. Professor James says:—"Reason, perhaps can inhibit no impulses; the only thing that can neutralise an impulse is an impulse the other way. Reason may, however, make an inference which will excite the imagination so as to let loose the impulse the other way"

In Man, during conflict of instincts, deliberation and choice come into play and the Human Mind can select one impulse and by its help, inhibit another impulse. If necessary and if it has the requisite will-power, it can strengthen an impulse by pouring energy into it to conquer another impulse.

An instinct may become narrowed in its operation through habit. There is instinct to get a wife but when one gets accustomed to a certain wife, he may not like a different woman as wife. In this way a man may get attached to a particular residence, to a particular village, to a particular diet, to a particular dress.

The Law of Habit impels us to stick to our habit. When we get a certain habitual mode of satisfying an instinct, we stick to that particular mode and do not adopt any other mode of satisfying the instinct.

Sometimes the same object at first arouses contrary instincts; in that case the instinct first followed secures the help of the law of habit in its favour and triumphs. Animals sometimes rouse in some children opposite impulses to fondle and to fear. The impulse first followed may prevail.

Some instinct appears at a certain age and then fades away. If followed it develops, otherwise it dies. Those who do not take to athletic games and out-door exercises when the impulse is very strong in early youth, seldom develop the same at an advanced age. Changes in human interests as human life progresses from childhood to old age show a change in the impulses.

SEC. 17.  
Habit.

§ 17. The effect of habit is seen (a) in organic activity as well as (b) in activity of inner consciousness. Habit is the process under the effect of which a work which requires to be done by conscious mind can be transferred to the sub-conscious mind. Activities performed in the beginning with conscious control, on formation of habit, can be performed under subconscious control. Secondly automatic actions and secondary impulses are the result of the operation of Habit. Reproduction of habit involves operation of previous experience; in reproduction of memory, previous experience floats up from subconsciousness to consciousness; in the habit, previous experience shows its operation in action.

(a) *organic habits*: The activities and co-ordinations of the voluntary muscles first performed with conscious direction and conscious control, gradually come to be performed with mechanical automatism; walking, swimming, riding, cycling, writing are organic habits. All muscular dexterities are organic habits.

(b) *Mental habits*:

(i) In the growth of perception, the experiences through different sense organs, become co-ordinated; what was once the result of conscious discrete experience, through habit becomes an act of intuition.

(ii) In judgments of every day life, owing to previous performances in similar circumstances, many links in a train of reasoning may not rise to consciousness at all. Commonsense judgments show operation of the process of habit.

(iii) Mental habits appear in our intellectual judgments, our beliefs and opinions, our feelings and our conduct. In all these between consciousness of the occasion and the consciousness of the final result, many necessary links or processes may not at all rise to consciousness, after previous conscious performances of the similar processes before.

(c) *Habit as a process for economising energy of consciousness.*

The innate contributions of the mind plus the influence of environment, shape the formation of certain habits of thinking believing, acting, feeling. These habits working automatically, spontaneously leave the energy of conscious activity for higher work and new conquests. Habit retains and consolidates. Habit is a process of creation by the individual; its conscious energy creates a mechanism in its nature. As soon as the machinery created can take charge of work in a department, the consciousness is liberated for fresh conquests. The mischief takes place when the man becomes a pure machine; and conscious creative activity from temporary sleep, passes into the coma of death, and can not be roused up though a change in the circumstances call for a new adjustment.

(d) Conscious intervention of the higher parts of the mind becomes necessary in starting habitual acts. Sensation occasioned by the muscular contraction just finished is sufficient to call the next muscular exertion by way of reflex activity. Even these sensations may go down to subconscious mind which rouses up consciousness as soon as there is any thing wrong.

(e) *Secondary impulses, the result of Habits.*

Performance of a certain course of conduct with conscious purpose and conscious direction, terminating in a habit, may develop also a blind impulse to perform that particular course of conduct. This blind impulse is ordinarily a specialisation of some general impulse.

(f) *The mechanical life of habits.*

One great function of consciousness, is to help man to adapt conduct according to the peculiar conditions of human life in social and natural environment. Degree of conscious alertness and conscious adaptability tends to decrease, as acts are performed with more and more unerring certainty. In doubt, uncertainty, conflict, greatest conscious wakefulness is required. As men get settled to a fixed social and natural environment and as men grow old, life tends to become mechanical, dreamy, with less and less degree of consciousness.

(g) Habit is the great conservative agent in society. Its social value is very great. It is the great upholder of order.



Professor James says:— "It alone is what keeps us all within the bounds of ordinance and saves the children of fortune from the envious uprisings of the poor. It alone prevents the hardest and most repulsive walks of life from being deserted by those brought up to tread therein . . . . It dooms us all to fight out the battle of life upon *the lines of our nurture or our early choice* and to make the best of a choice that disagrees. . . . It keeps different social strata from mixing."

(h) Our confidence in the law of habit, is the basis of our inference about the writer of a hand-writing, by comparison with the admitted or proved hand writing of the writer. Mr. W. E. Hagan in his work on "Disputed hand-writing" expresses the following opinions :

(1) Excitement, fatigue, disease, old age, loss of nervous power have a tendency to influence the hand-writing of a person.

(2) Signatures produced for comparison should have been written within 3 or 4 years of the date of the signature in dispute or even a year or shorter still when the writer is very old.

(3) Signatures often vary according to the degree of the solemnity of the deed or instrument.

(4) Two signatures of the same person rarely coincide. It has been found from actual calculation that such coincidence only happens once in two trillion eight hundred and sixty six billion times

SEC. 18.  
The full-  
developed  
Type of  
Action.

§ 18. Conscious voluntary action rests upon the subconscious mental activity whence comes the original impulse to activity. This original impulse may be one for self-preservation or for continuity of the species or any other impulse, primary or secondary. Organic wants and mental wants which may be described as organic and mental impulses are the primitive springs of action. When they enter consciousness which is of a self, they appear as wants or impulses of self accompanied with present uneasiness or an idea of subsequent uneasiness. There may be an impulse from within producing a pain of unsatisfaction and one may fail to represent in consciousness the object of the impulse or the means to satisfy the same.

The object of the conative impulse is the conditions of satisfaction of the impulse, as they appear to the subject in

advance of actual satisfaction. The subject may be more or less mistaken in judging beforehand about the conditions of satisfaction. For satisfying an impulse, there may be trial and failure.

In conscious thought, the impulse springing out of the subconscious mind and the organism, may take the form of an end, the end, being carrying out the general purpose of the impulse or any means for carrying out the general purpose of the impulse.

(B) In the fully-developed type of voluntary action, the idea of self always enters. It is the action of self working for personal ends. It is always determination according to self's choice, self's end, self's selection. The fully developed type of voluntary action involves the following elements:—

(1) **The End**:—The action takes place for the realisation of an end *consciously* present in the mind of the actor.

(2) **The desire**:—the impulse coming out of organism or the subconscious, in consciousness, takes the form of a desire; but *desire* is not only conscious impulse but is also the *conscious tendency* of the self for the realisation of the end.

(3) **The means**:—The means for carrying out the end remains in consciousness, as consciously selected.

(4) **Deliberation**:—The choice of means and end is the result of *conscious deliberation*.

(5) **Conflict**:—Deliberation is necessary when there has been a conflict of means or conflict of ends or both.

(6) **Choice**:—The choice of means and end, is done *consciously*.

(7) **Consequences**:—All the consequences that may happen for the realisation of the end chosen, by the means chosen, so far seen at time of deliberation and choice, are accepted.

(C) The essence of fully developed volition is in the acceptance by the permanent essential part of the self. It is the intervention of self-consciousness; desire; end, accepted by self becomes volition. The force of volition comes from the idea of self, from the force behind self-consciousness; from the Empirical self of which one is conscious as part and parcel of his self. *Self consciousness* is a sentiment; it has along with it an organised group of emotions; this total is a power;

this is of the Empirical self. According to Dr. McDougall volition may be defined "as the supporting or reinforcing of a desire or conation by the co-operation of an impulse excited within the system of the self-regarding sentiment." He says :— " The conations, the desires and aversions, arising within this self-regarding sentiment, are the motive forces which adding themselves to the weaker ideal motive in the case of moral effort, enable it to win the mastery over some stronger coarser desire of our primitive animal nature and to banish from consciousness the idea of the end of this desire." The Empirical personality in conscious deliberate choice and volition, may be described as an organised system of ideas conscious or subconscious or an organised system of ends conscious or subconscious, or an organised system of conations and habits of will or an organised system of emotions ; this organic unity is unity of all these factors and is neither a mechanical nor a chemical nor a biological unity but is more than all these. The unifying principle of the organic mental body of the Empirical self, may be called the Immanent Personality.

SEC. 19.  
Types  
of activity in  
actual every  
day life.

§ 19. The fully developed type of voluntary action as described above, is not the one which characterises all our activities ; in the major portion of our actual behaviour, the types do not come to this fully developed type of voluntary action. The various other types of our behaviour are described as follows :—

*Impulse-motor*

(1) An impulse from subconscious mind may be followed by conscious action, without any consciousness of end, means, without any choice or deliberation, or conflict or consciousness of consequences.

(2) The action may be purely *impression-motor* ; on the occasion of a sensory impression which may or may not rise to consciousness, there may be at once action, without any other element in consciousness.

(3) The action may be *perception motor*, action following a perception, without any other conscious element. A person being suddenly roused from sleep at dead of night by a noise, finds a person entering room through a window ; he shoots him at once with the loaded revolver at his side.



(4) The consciousness of end and means may rush at once into consciousness and may be followed by action without any other conscious element.

(5) In purely *ideo motor* activity, the idea of end in consciousness may be followed by action, without any other element in consciousness.

(6) A person after deliberation may choose the means and end consciously, *but the collateral consequences may be entirely absent from his consciousness or may be more or less absent from his consciousness.*

§ 20. The term "Motive" may be used in the following senses :— SEC. 20.  
"Motive"

(1) The idea of end consciously chosen.

(2) The original impulse that comes from the subconscious or the organism.

(3) The conscious desire.

(4) If the term "intention" be confined to the end desired, the self accepting the end and tending to realise it (so far affected and as an impulse to activity) may be taken to mean "motive"; in this view, *intention* may be taken as the intellectual aspect, and *motive* may be taken as the conational affective aspect of the same motion of the self.

§ 21. "Intention" contains the following elements :—

SEC. 21.  
Intention.

(1) The end desired (2) the means chosen though it may not be desired (3) the collateral accompaniments and all consequences other than the end desired,—which may not be desired but foreseen and suffered to take place.

Intention is wider than desire, wider than end chosen, wider than spring of action.

In the eye of law, "intention includes not only consequences actually foreseen on the particular occasion but also all those which a reasonable normal man should have foreseen if he acted with due care and caution."

The *Legal intention* is not a psychological reality always but is an ideal creation, the result of a practical rule of legal administration for carrying out the policy of the law.

§ 22. (1) Law deals with Human behaviour. The capacity to control our behaviour so far required ordinarily by law always exists in all normal persons, who are not infants. This control is control of voluntary muscles of body. SEC. 22.  
Free-will

(2) But these bodily movements depend upon volitions which are psychical facts. In spite of the abstract potential capacity of normal persons aforesaid to make the bodily movements required by law, these bodily movements being always determined by our volitions, there can not be any real freedom, without a freedom to make the volitions.

(3) Law assumes that in every stage of society, the normal members aforesaid of that society at that stage have capacity to make the volitions required for obedience to the law. This sort of freedom of will is sufficient for the jurist. This is capacity for self determination according to the Ideal imposed by the existing law of the particular society. The jurist has nothing to do with the freedom of will to act without any motive or any reason *i.e.*, Liberty of indeterminism. *Freedom of will required by a jurist is only a capacity to live according to the Legal Ideal of the particular society to which the individual belongs.* This sort of freedom, we find, in the organic world whether vegetable or animal. The habits of matter in molar, molecular, chemical and electric manifestations are ruled by fixed laws; in the realm of life in animal and vegetable kingdoms—the spontaneous variations the upward trend of the evolution itself—represent a departure from the law of mechanical causation of the region of the non-living. To apply fully and exclusively the mechanical law of causation to the vegetable and animal kingdoms is an abuse of analogy. Every plant can regulate its behaviour according to the ideal of its type. Every animal organism can regulate its functions, according to the type to which it belongs. It is sufficient to the jurist, if each human personality can regulate his behaviour according to the legal ideal or type of the organic society, of which, he is a member. The juristic free-will may have fixed habits acting according to certain ways as required by law.

Capacity of vegetable will to create vegetable life according to the type to which the individual plant belongs, and the capacity of the human will to act according to the Legal Ideal of the society to which he belongs are similar facts.

(4) Juristic free-will is not opposed to the law of conservation of energy. We know what vast energy can be had from the disintegration of an atom. Every organism is a



machine for transforming one form of energy to another. The Juristic will may draw from the vast available source of energy all that may be necessary for strengthening the motive to act according to law and to inhibit action contrary to law. This would be merely transformation of energy from one form to another. The force to help a weaker impulse to act according to law against a stronger motive to act against law, in normal man, can be drawn through the sentiment of self-consciousness ; the legal sanctions are intended to add to the strength of the operative power of the sentiment of self-consciousness.

(5) As there may be plants which are abortive and fail to function according to its type, so there may be occasions when the juristic free-will does not energise according to the Legal Ideal. But this failure in case of Human Juristic free-will may arise from three causes :—(1) owing to the free-choice of the will to act contrary to law (2) owing to defect of motor-force of the will to act according to law (3) owing to intellectual deficiency.

The fact should be clearly recognised that in spite of our subjective consciousness of freedom, real freedom to act according to Legal Ideal may sometimes be wanting.

Hypnotism reveals cases in which a man though acting with full consciousness of freedom is carrying out only a previous suggestion made during hypnotised condition. On actual experiment it was found that post-hypnotic acts suggested to tranced subjects were carried out by them after awaking, although told that they could do anything they pleased. But John H. King says :—"Post-hypnotic suggestion by others is not always effective. Unless the suggestion harmonizes with the mental unity in the subject, it is rejected. Hence the rarity of such affirmations. This, in itself, is a proof that the retention does not depend upon the mental power of the operator or the force of his will, that it does not indicate a telepathic or apparitional presentation but *simply an accepted suggestion* which might have a material origin retained in the subjective memory and like all physical as well as mental deferred suggestions, waking into life at the due sequence of time." For carrying out the ideal of law, it is necessary that attention should be concentrated on such idea which should be realised for obedience to law, that by



concentration of attention, the retarding force of contrary course of conduct should be made weaker. To direct and control our nature by effort can be developed into a habit by practice. A habit of self-direction and self-control can be developed. The power of conscious will to control and direct conscious mental life differs in different persons; this will-power has not the same content in all persons and can be developed by culture. In our capacity to evolve and strengthen this *Empirical free-will*, we are somewhat masters of our fate; our inner subjective consciousness that we are free is the vision of an ideal-goal in our endeavour to develop Empirical free-will and is an essential subjective condition for the growth of empirical free-will by habit and culture. But will-power is a non-moral force; it may be used for good or for evil purpose.

(6) Responsibility is a legal concept. Responsibility exists where positive law says it exists. To define the extent and nature of Responsibility is the function of positive law. Positive law lays down under what circumstances civil and criminal responsibility should be taken away and when out of policy of law, such responsibility should be imposed. But in defining boundaries and nature of Responsibility, it is the duty of law to consider how far the normal members of the particular society with empirical free-will as they possess, will be able to conform to the ideal of Responsibility imposed by law and also to consider the various types of conduct (other than fully developed conscious voluntary type) which are actually followed and their extent.

When the ideal of law is the ideal of a higher type of civilisation, which has assimilated in its political organisation individuals of an inferior type of civilisation special provision may be required for individuals of the lower type of civilisation incapable to act according to the higher ideal of law.

Owing to infancy, unsoundness of mind, seclusion from contact of full life (as in the case of pardanasin ladies), owing to intellectual inadaptability of a people of a simpler civilisation to conform to the Ideal of law of more complex civilisation there may be failure to live according to the legal ideal.

(7) In the animal, vegetable worlds every control in organic life is by type-ideals. Similarly in social life, in

defining the nature and extent of legal responsibility, law should consider what may be taken as the normal type of empirical free-will in the particular society as a real fact. In the definition of the extent and boundary of responsibility, this psychological fact will be one of the points for consideration. The finding out of such a normal type of empirical free-will is however framing an ideal and there will be always exceptional individuals who sometimes show absence of that standard of empirical free-will.

(8) *Evolution of will-power*:—In the evolution of will power, control is obtained at first over our voluntary muscles; and subsequently control is obtained over the mental subjective states. By controlling the external expressions of a feeling, a feeling may be controlled; but sometimes the suppression of the external expressions intensifies a feeling owing to increase in intensity of the visceral changes. The safe method of controlling an emotion is to divert the mind from the object which rouses the emotion, by engrossing attention on some other object.

§ 23. The strength that can be exerted through the voluntary muscular system, varies according to circumstances. The circumstances should be considered when a person is alleged to have performed a muscular feat ordinarily impossible with him. A thoroughly fatigued man can exert little force; when suddenly roused from deep sleep, a person may feel pain to exert much strength. If fresh and wide awake, a person can exert greater strength. If emotionally excited, a person can exert greater strength; a maniac in maniacal excitement can exert still greater strength. A woman during a fire removed a heavy chest which she was absolutely unable to move afterwards.

SEC. 23.  
Direction of  
energy in  
the voluntary  
muscles.

§ 24. Persons accustomed to obey a certain person sometimes feel helpless and absolutely unable to disobey him. By habitual obedience, the motor system gets a tendency to react according to the order of command of the person; and the habit may become so strong as to become irresistible. The habit of obedience requires to be developed by actual practice. The habit of obedience when conformed to by all, becomes a sort of custom; the strength of this custom becomes a very powerful force, acting through imitation, sympathy,

SEC. 24.  
Obedience.



for inducing all new comers to conform to that custom. Long existence of certain lines of obedience in human society gives rise to certain habits of thinking and of acting, which induce the new comers to conform to those habits of thinking and acting. The law of habit aided by the influence of tradition is at the root of the force which secures obedience of family-members to the head of the family, of students to the head of school or of college, of subjects to their rulers. This law of habit aided by the influence of tradition secures the obedience of inferior castes to higher predominating cases.

It is the interest of the Jurist to secure the obedience of all people to law and legal authorities. Systematic drill is one means for developing a habit of obedience in school children. The head of a family can develop obedience to him of family members by engaging them to perform actions which they are glad to perform but which take the form of obedience to the orders of the family head. If the governing body of a political organization, engages the subjects in doing various things which they are glad to perform and promote good, but under the form of obedience to the orders of the governing body, the subjects develop a habit of obedience to the governing body. If a ruler habitually plays the part of a leader of his subjects in all things that please them and at the same time promote good, the subjects will develop a habit of obeying their ruler.

SEC. 25.  
"Prestige."

§ 25. "Prestige" is that peculiar sort of influence upon a mind, under which the subject-mind's critical faculty is paralysed and an automatic reflex obedience is obtained from the subject to the authority enjoying the prestige. The man who becomes the hero of another comes to enjoy prestige upon him. Prestige may have subjective as well as objective origin. (1) *Subjective prestige*: Every human heart moves towards a certain ideal which he worships and which depends upon his individual mental constitution. All persons who embody this ideal in their lives come to enjoy prestige upon him. This prestige is of subjective origin, being the worship of the objective personification of the ideal of one's heart.

(2) *Objective prestige*: Objective prestige is the result of influences coming from outside the individual mind. Fear,



wonder, admiration, reverence, a habit of habitual obedience, imagination in divergent combinations may come into play.

Dramatic exhibitions of power pouring through the external senses, easily captivate the ordinary mind and give rise to prestige. All ordinary people are easily impressed by what forces upon their senses directly than by what is discovered by trains of reasoning. The general at the head of his army, a king receiving the homage of thousands at a great Darbar, evoke a feeling of submission and obedience in all ordinary spectators.

It is prestige that strikes down a person before one of vast wealth or vast power or holding some very high position in life which gives him power.

Power of whatever nature to exercise highest degree of Prestige should seem sufficiently inscrutable to stimulate the activity of the imagination. A man seems more formidable, the more he is incalculable. It is by his reserve, by concealing something, that sometimes a man may come to possess some prestige, while in case of too much familiarity, contempt may replace prestige. The leader in every department of life, the successful man in every profession, always come to possess greater prestige. Prestige gives authority of the lawyer over his clients, the landlord over tenants, priest over flock, all sorts of rulers and administrators over the persons ruled. Large numbers among the masses in India believe in the supernatural powers of holy men of India; any person in the customary dress of a holy man often commands instinctive respect and exercises some amount of prestige.

Political obedience secured by mere pressure of excessive force is artificial; it is like securing obedience by holding a loaded revolver in front of a person. Force may give rise to prestige; other causes may give rise to prestige. When political obedience is secured by prestige it is natural and more lasting. A broken limb can be kept in its place by an artificial bandage; mere force is like this artificial bandage. It may be necessary when the individuals do not form the living members of the organic political unity of a state. But when the injury is cured, the artificial bandage does not become necessary. Prestige binds the subjects to the state just as the living body by its own natural parts binds the different parts to the body.

It is a question of fact for every society as to whether splendor magnificence, pageants, external display of power and wealth are necessary for developing prestige or whether these can be dispensed with and only higher administrative virtues would be sufficient for the purpose or whether both should be partly combined.

. 26.  
Pathology of  
emotion.

§ 26. When the emotions are disproportionate to the circumstances which arouse them, we have pathological cases. Cases of absolutely unmotivated anger, fear, conceit, melancholy, apathy, are found in the Lunatic Asylums.

Subconscious beliefs may engender emotion which the rational mind condemns. A person who does not believe in spirits and ghosts, may feel overcome with fear in a dark night if alone at a burial ground or cremation site.

When something unusual happens, a strange emotion of fear may overcome us. This may happen in the animal world. A dog once showed hysterical fear on seeing a bone move, which was moved by a string which it could not see. During darkness produced by an eclipse of the sun, animals show alarm. Men even showed such alarm during a sudden unreported eclipse. If suddenly a closed window is opened of itself, a sudden fear may overtake us, though this may be inhibited on the consideration that the window bolt was opened by the movements caused by the wind. These fears in man may involve subconscious belief in presence of some supernatural power or may be merely life's contrivance to arouse our attention at any unusual change in the environment which may require new adjustment of conduct.

SEC. 27.  
Psychological  
basis of  
authority or  
sanction.

§ 27. Human behaviour when regulated consciously with deliberation is regulated by reference to a standard of relative and respective values of various courses of conduct. This standard whether prudential or ethical or religious, is a thing of growth in each individual mind. The growth is conditioned by the operation of the whole nature of man in all its aspects. Every growth in phenomena of living mind shows something new. The aspect of the Human mind which sees the value, may be called Practical Reason; the standard may be called an ideal. The standard seen by Practical Reason may differ in different societies under divergent conditions of life and different stages of progress. Nevertheless the



ideal of reason is a social ideal. But sanction is a personal matter. When a man in whom self-love rules asks the question "Why shall I be just? why shall I be truthful? why shall I be honest?" you can show the authority or sanction of these courses of conduct, only if these courses of conduct can be made to agree with his self-interest. For such persons social, legal punishments on this earth and fear of punishments in the next world become necessary to harmonise virtues with self-interest. A soul intoxicated with the self-less passion of love for Humanity, finds in love its justification and final reason. A vision of an ideal of behaviour is not its authority. Practical reason gives the vision but does not supply the motor force. The motor force is the sanction—the authority. This sanction, this authority is to be found in the conative-affective disposition of a man. This conative-affective disposition influences and secures the homage of the Human will not by way of mechanical causation but by way of biological growth, under which the Human free-will transforms a certain disposition or dispositions of the conative-affective nature (which is also Human will in another plane) into a proper motive for its conduct. The dispositions or tendencies or impulses to which the Human free-will voluntarily conforms stated in the form of judgments or beliefs conscious or subconscious are the ultimate psychological sanctions or authorities of Human behaviour. To induce a man to follow a particular course of conduct, you must make him believe that this course of conduct is necessary for the realisation of the principle or principles according to which his will acts under the influence of his conative affective disposition. The homage of the practical reason shows only an ideal; the homage of the will through influence of conative-affective disposition, makes practical realisation of the ideal possible. A standard of conduct first seizes the intellect or reason; it may or may not seize the will; it seizes the will by being supported and elected by the conative-affective nature of man. The first election of the intellect gives the knowledge of the ideal; the second election by the conative-affective disposition gives the sanction or authority to the ideal. For actual practical realisation, the will must move and act; this action may take place spontaneously



through the momentum of the conative-affective nature as it is or by effort of free-will which by changing relative distribution of strength as necessary, in the elements of conative-affective nature, brings out practical realisation of the ideal.

It is clear that knowledge of virtue, is not being virtuous. To be virtuous, virtue should become a motive of the will and should be actually acted upon by the will. But it should be remembered that all our judgments of values of the practical reason, (as felt subjectively) involve operation of impulses and emotions in a very mild diluted form ; in the judgments of the practical reason weak dilutions of impulses and emotions remain concealed under the mask of reason ; without their operation, the judgments of practical reason are impossible.

The ideals of prudence or of good are objective and so far they are traditional may be learnt without a personal feeling for the same. The personal sense of prudence or the moral sense for the good involve operations of weak dilutions of emotional and conative aspects of the mind. The ideals of prudence or of good so far they agree with the conative and emotional forces which the will follows and which constitute the essence of the personal will, become reduced into practice. The principles with which the personal will remains identified are the only sanctions of the personal conduct, and ideals become operative so far they become only cases of application of these principles.

SEC. 28.  
Springs of  
action.

§ 28. (1) Impulse to spontaneous activity (2) Impulse to reflex action (3) Instincts (4) Present pleasure tends to maintain the action producing it and present pain tends to inhibit the action producing it ; after experience of pleasure and pain whatever tends to produce pleasure has impulsive power and whatever tends to produce pain, has inhibitional power. The various desires and aversions, inciting us to particular actions in expectation of pleasure or to avoid possible pain.

(5) Previously-acquired habits which automatically incite us to do as we have been before accustomed to do under the like circumstances. The habitual actions may be sensori-motor or perception-motor or ideo-motor.

(6) The ideals of conduct not merely known but accepted by the affective-conative nature of man,

(7) Impulse to imitate. (8) Professor James says :—"It is the essence of all consciousness (or of the neural process which underlies it) to instigate movement of some sort" "The impulsive quality of mental states is an attribute behind which we cannot go. Some states of mind have more of it than others, some have it in this direction, and some in that. Feelings of pleasure and pain have it and perceptions and imaginations of fact have it but neither have it exclusively or peculiarly."

In our actions, we do not always choose what seems to us to be good or pleasant. Sometimes the very badness of an act may fascinate a mind and lead him to act under the impulse of imitation.

§ 29. Dr. Carpenter says :—"Like the higher form of commonsense, Tact is often so strongly manifested at an early period of life, that one can scarcely refuse to it the character of an original intuition ; whilst it is also eminently capable of being acquired or at any rate improved by a volitional culture which directs the attention to the impressions fitted to develop it ; and it is in this way that a woman comes to possess a direct insight as to what is due to consideration for others, which the duller and more rational apprehension of man can seldom attain."

SEC. 29.  
Dr. Carpenter on Tact.

§ 30. The production of emotions from mere bodily changes is clear from the following extract from Th. Ribot : "Wine gives rise to joy, alcohol to courage, ipecacuanha causes a depression akin to fear, haschisch produces exaltation and shower bath calms it. Asylums are full of patients whose irritability, melancholy and anguish are "causeless" *i.e.*, result from no perception or image."

SEC. 30.  
Influence of body on emotional life.

Irritability is found in aortic affections ; a taciturn and melancholy humour is found in mitral insufficiency ; melancholy and pessimistic dispositions are sometimes found in dyspepsia and constipation. In diabetic patients, composition of urine bears a relation to mental state.

§ 31. The teleological function of an impulse is to produce an objective behaviour. But the energy instead of helping the will for performance of realised behaviour, may be diverted in producing abnormal and morbid physiological effects with great excess of the feeling-element. The energy

SEC. 31.  
Opposition between impulse and emotion.

which should have been utilised for voluntary manifestation is wasted in unnecessary involuntary manifestation. We find on many occasions that a fine emotional life is one without action. Cultivation of a sentimental emotional life may prove injurious to energetic action of practical life.

SEC. 32.  
Some organic feelings.

§ 32. (1) Feelings of the alimentary canal (Hunger thirst, malaise, nausea etc.).

(2) Feelings of the respiratory apparatus (asphyxia, dyspnoea, the need of fresh air.)

(3) Feelings of the circulatory apparatus. The heart feeling of a circulatory modification enters in emotion.

(4) Feelings of excretions and secretions.

(5) Feelings of sexual apparatus (in puberty, in menstruation, in pregnancy and in menopause).

(6) Feeling of need of muscular movement.

(7) Feeling of impulse to rest.

(8) Feeling of impulse to sleep.

(9) Feeling of fatigue.

(10) Feeling of freshness.

SEC. 33.  
Some types of character.

§ 33. (1) The *explosive* will which may be the result of defective inhibition or exaggerated impulsions.

(2) The *obstructed will* which may be the result of excessive inhibition or insufficient impulsions.

(3) The *amorphous*: They mean reflected borrowed light of the physical and social environment, mere echoes of the voices of others. Chance decides their occupation, marriage and other things. They allow circumstances to will for them instead of controlling circumstances by their will.

(4) The *unstable*:—Th. Ribot calls them an impersonal bundle of incoherent impulses. "capricious, changing from instant to instant, by turns inert and explosive, uncertain and disproportionate in their reactions, acting in the same manner under different circumstances and varying their actions in the same circumstances, they are indefiniteness itself" (Th. Ribot).

(5) The *Sensitives*: Th. Ribot says: "Impressionable to excess, they are like instruments in a perpetual state of vibration and their life is for the most part inward." With keen intellect a sensitive may become contemplative, with limited or moderate intelligence and timidity and no energy



a sensitive may become very humble. With spasmodic activity and intellectual debility, a sensitive may become emotional.

(6) The *active*: This class have great energy for activity. Action is their joy.

(7) The *apathetic*.

§ 34. Rarely is human conative-affective nature so thoroughly and consistently coordinated in the same personality, as to make his behaviour logical and consistent in every detail and in every conduct of life. The conflicting impulses in actual life do not always conform to the rule of the regulating standard not one worshipped as an ideal but one actually followed; this life of inconsistency is kept up partly owing to deficiency of moral vision and partly owing to strength of some impulse or impulses. The pathological cases of double personality are extreme cases of the phenomena in normal life of discrepant behaviour. In hypnotic condition, by ruling out portions of memory and by appropriate suggestions, we can prevent action of the whole mind; the partial activities of disintegrated fractions of mind may be made to develop different personalities by appropriate suggestions during hypnotism. In mediumships and possessions, we have special types of alternate personalities. In the normal life of man, owing to partial temporary oblivion, bad association between the different parts of mind, control of attention by strong emotions and impulses—each emotion or impulse tending to revive memories and associations suitable for its self-preservation and self-advancement and tending to rule out contrary memories and impulses the operation of habits, discrepant behaviour proceeding from different personalities, may take place in one and the same man.

SEC. 34.  
Co-ordination of conative-affective nature.

We have already stated that the Human Personality is an organic unity of many complexes—which are like personalities and that this organic unity is an ideal. Imperfect coordination and organization of these complexes, produces discrepant behaviour.

In normal grown-up healthy minds, on most occasions the scope and jurisdiction of each such complex is fixed for practical purpose and thus a stable character is found on basis of which others can regulate their conduct in relation to such person.

In ordinary normal life, a man has often several personalities without any complete splitting up of his personality; he acts in one way in his public life and in another way in his private life; he is one man as a legislator or as an editor or a civil administrator or a soldier or a police-officer; he is another man before his wife or his lady-love. He is one man in his family among his children while he is quite a different man as a dacoit or robber; when party feeling is high, under its influence he may become a changed man and play a part quite inconsistent with his ordinary normal life. A man thoroughly honest and honourable in his every day life, may in a litigation when blood is up, stoop to perjury, forgery under the passion of litigation. A witness under the passion of party-feeling in a litigation may tell lies without any hesitation, although in his every day life he ordinarily speaks truth. Litigation fever is similar to war fever; each of these passions may cause a temporary change in behaviour and thus create a temporary personality. Extreme anger, a violent fit of sexual passion may induce a man to commit acts which he severely condemns in his normal condition. The violence of anger or of sexual passion produces a personality different from the ordinary personality.

SEC. 35.  
Unifying  
emotions.

§ 35. Various complex emotions grow up, each emotion unifying a certain number of individuals. These may become wider and wider in range and sweep. Each such unifying emotion in relation to the individuals unified does good but in conflict with a unifying emotion of wider sweep may produce evil. Zeitgeist or spirit of the age subconsciously influences. There are the spirit of the family, the spirit of the village, the spirit of the city, the spirit of the district, the spirit of the country, the spirit of the continent, the spirit of the race, the spirit of the tribe, spirit of caste, spirit of profession, spirit of class, spirit of community of religion, spirit of the same type of material civilisation and similar common spirits. Under subconscious influence of such an unifying emotion, thieves would keep word of honour among themselves; robbers and dacoits help one another and keep mutual faith. A common spirit may generate a moral tie among its members and may create common beliefs, sentiments, courses of conduct and a common bond of love and interest. Under the influence of such

a unifying spirit, a witness may subconsciously perjure, and a judge may subconsciously lose his impartiality. Every unifying emotion creates a self-interest. It tends to develop selflessness among members of the group; but tends to create selfishness towards members outside the group. The outsiders may be sympathisers, neutrals or foes. The unifying emotions have brought great blessings as well as great woes to Man. The unifying emotions which unify races, colours, nations, historic religions, civilisations, will be always mighty forces against gathering of the whole Human Race into one happy family where peace, love, good-will shall reign supreme.

§ 36. W. McDougall says:—"this disinterested indignation is the ultimate root of justice and of public law; without its support, law and its machinery would be most inadequate safe guards of personal rights and liberties, and in opposition to the moral indignation of a majority of members of any society, laws can only be very imperfectly enforced by the strongest despotism."

SEC. 36.  
McDougall  
on disinter-  
ested indig-  
nation.

§ 37. W. McDougall says:—"the impulse to collect and hoard various objects is displayed in one way or another by almost all human beings and seems to be due to a true instinct; it is manifested by many animals in the blind unintelligent manner that is characteristic of crude instinct. And like other instinctive impulses of man, it is liable to become morbidly exaggerated, when it appears in a mild form as the collecting mania, and in great excess, as miserliness and kleptomania."

SEC. 37.  
W. Mc  
Dougall on  
the instinct  
of acquisi-  
tion.



## CHAPTER XIII.

### THE UNSOUND MIND.

#### SEC. I.

##### Definition.

##### Definition of Dr. Savage.

§ 1. According to Dr. Savage, "*Insanity is such a disorder or disease of the nervous system as prevents the individual from reacting normally as a member of the society to which by birth and education he belongs. Unsoundness of mind may arise from some defect of the nervous system which interferes in a minor degree with the normal reaction of the patient to his circumstances, but which need not affect his social life in any important way or degree*"

##### Definition of Dr. Bucknell

According to Dr. Bucknell, insanity is "*a prolonged departure without perceptible cause from the state of feeling and mode of thinking common among sane people, due to disease of the brain affecting the integrity of the mind—this not being the mere symptoms or result of fever or passion, that is to say not being the passing symptoms of some disease or the temporary result of intoxicant though strictly speaking the line can not be drawn between the latter conditions.*"

##### Dr. Maudsley's definition.

According to Dr. Maudsley, Insanity is a derangement of the leading functions of thought, feeling and will together or separately as disables the person from thinking the thoughts feeling the feelings and doing the duties of the social body in for, and by which he lives."

##### Dr. Mercier's definition.

Dr. Mercier defines Insanity, as, "a defect or disorder of the process of adjustment of self to circumstances and as comprising four factors of disorder—disorder of conduct, of mind, of metabolism, all of which are dependent on disorder of the highest regions of the nervous system." ' According to him, in any case in which there is a doubt as to the existence of the Insanity, the test to be applied is whether this disorder of the process of adjustment be or be not present. If it be, the subject of the enquiry, is insane ; if it be not, he is sane,"

An unsound mind means a mind which is not sound. We use the term "unsoundness" in the widest sense to include every departure from the ideal of a sound mind, temporary or permanent, whether arising from arrest in normal development or from decay and deterioration of a normally developed mind, or whether arising from the functional disturbance in the harmonious and balanced working of the constituent elements of the human mind, or whether arising from any disease, of whatever character. An unsound mind as conceived here includes cases of idiocy, imbecility, weak-mindedness, cases of disintegration and decay and all temporary disturbances also ; all cases of psychical epilepsy and any other case of unsoundness of mind arising from epilepsy or hysteria. Mania, Melancholia, Dementia, insanity of mind, unsoundness of mind, are psychological concepts. Insanity, unsoundness are to be understood by a reference to the ideals of "Sanity" and "Soundness." These concepts "Sanity" "Soundness" are like concepts "Justice, Equity, Goodness" These terms can not be completely and exhaustively defined. Dr. G. F. W. Ewens in his *Insanity in India* says :—"It is comparatively easy to recognise that a person is insane but it is very difficult to give an accurate definition sufficiently comprehensive to include all its varieties. Dr. Bernard Hart says that "insanity is not a definite entity like scarlet fever or tuberculosis but it is used to denote a heterogeneous group of phenomena which have but little in common." He says that "*its boundaries have varied from age to age according to the dominating conceptions of the period,*" and "that individuals who in mediæval times were regarded with esteem and reverence would now be removed without hesitation to an asylum."

Our definition.

Every properly developed human society in every stage has an ideal of moral conduct, an ideal of law of crimes and an ideal of sanity. If an individual who belongs to this society *by birth and education*, departs from the ideal of the law of crimes, he becomes a criminal ; if he departs from the ideal of sanity, he is regarded as of insane mind ; if he departs from the ideal of moral conduct, his conduct is regarded as immoral. Every human mind has certain stable common parts which he shares with other individuals of the community to which he belongs by birth and education ; these stable common parts

indicate a certain type of mind. When the individual falls below this common type either owing to arrest in proper development or owing to decay, loss, disintegration of what have been acquired to such a degree *as would be called Insanity by the general opinion of the aforesaid community*, he would be called an Insane. *The ideal of sanity may differ in different communities having divergent history and environment.* The existence of a common social average type tolerates the existence of a personal type of normal mind. Every individual has a certain personal type of mind which the society allows to be treated as sane even though not fully agreeing with the common social type. A revolutionary change in the personal type may be sometimes a very material index of Insanity.

"Insanity" is a socio-psychological concept. It should not be made to hang upon the legal concept of responsibility. The problem whether the Insane should be made civilly and criminally responsible for their conduct is a problem of law. The enunciation of the proposition that no insane person can be responsible tends to widen or narrow the meaning of the concept of Insanity according to one's belief relating to the extent of civil and criminal responsibility. A thorough freedom from legal bias is necessary for proper psychological study of Insanity. In the present definition of unsoundness we take the term as wider than insanity and as including cases of unsoundness of mind whether arising from Epilepsy or Hysteria or Insanity in the narrow sense or from any other cause.

SEC. 2  
Inference of  
Insanity.

§ 2. In the present state of our knowledge, insanity is best inferred by psychical symptoms ; these may be sufficient for inference of insanity. Bodily symptoms help this inference. From mere bodily symptoms, no insanity can be inferred. A knowledge of the psychical symptoms is obtained by the objective method of psychology. No outsider can enter into the mind of the insane save by inference from his behaviour. No fixed symptom or symptoms can be laid down for inferring insanity. The inference in each case should be made from all the circumstances.

Without careful observation, no inference can be made. Observation should be directed towards the points referred to below.



(A) **Bodily features.** The close relationship between the nervous system and the mind, suggests that any material bodily abnormality as may materially affect the nervous system may affect the mind. One or more of the following bodily features may be found in cases of insanity: (a) The skull may be larger or smaller in all dimensions than the average healthy sound skull (b) The skull may be misshapen (c) Extreme brachycephaly or dolicocephaly or there may be an evident disproportion between the dome and the base. (d) The face may be irregular and there may be defects in nose and ear (e) The teeth may be irregular.

(B) **Bodily conditions.** In a considerable proportion of insanities, one or more of the following bodily conditions may be noticed: (a) Painful or uneasy head sensations (b) malaise (c) disorders of digestion (d) impaired nutrition (e) modifications of pulse and of temperature (f) increase of oxalates and phosphates in the urine (g) sleeplessness (h) frequently arrest of menstruation in the women.

(C) **Some Psychological symptoms.** In many cases of insanity, one or more of the following psychological symptoms may be noticed: (a) restlessness (b) irritability (c) inability to apply the mind to the ordinary affairs of life (d) morbid introspection (e) depression (f) excitement (g) change in disposition.

(D) **The expression of the face:** Dr. Ewens says:—"Most probably on account of the loss of control over the emotions nearly always seen, the physiognomy of the insane is usually peculiar. The face often expresses some persistent emotions, exaltation, pride, gloomy rage and depression; always, it differs widely from a person suffering from any bodily disease. Just as characteristic is the total loss of expression seen when dementia has fully set in."

(E) **Intellectual Life:** (1) An insane is most unreasonable relating to any matter covered by his insanity; no conviction can be produced in him by reasoning; if the mal-adjustment can be corrected by reasoning, the mal-adjustment is not an insane one; in insanities the mal-adjustment of the behaviour to the environment cannot be corrected by reasoning. Dr. Ewens says:—"The majority are also defective in judgment, power of comparison, and of weighing facts and appreciating the relations of their environment" (2) When an

insane person has got illusion or hallucination or delusion he can not be made to shake them off and his delusion is of such a character which the community to which he belongs will not entertain. *A delusion which is shared by very large sections of the community, or by the community, is not an insane delusion.* (3) The normal man in his beliefs, opinions, actions often proceeds without the guidance of reason ; but in such behaviour he follows the community to which he belongs by birth and education. The irrationality of the insane runs against what the herd or community to which he belongs, do. *The irrational beliefs or behaviour which an individual shares with the community or a large section of the same, is not insane belief or insane behaviour.*

(F) **Emotional Life** : An insane may be egotistic, devoid of respect and wanting in any regard for persons or any consideration for others. A change in natural affections is a sign of insanity. A normal man may have emotional disturbance but the disturbance in the case of the insane is of greater degree.

(G) **Moral Life** : Inability to follow usual occupation or livelihood may be a sign of insanity. Dr. Mercier says :—  
“The great majority of insane persons are lacking in industry”  
“They have plenty of energy for the playing of games and pass the greater part of their time in recreations.”

(H) **Self control** : Dr. Ewens says :—“The loss of will power, of selfcontrol, is perhaps the most fundamental symptom of all forms of Insanity.”

(I) **Incapacity for concerted action** : Dr. Mercier says .—“The insane as is well-known are rarely capable of concerted action ; and when a lunatic is drawn into rebellion, it is usually because he is a person of weak mind, easily lead, does not fully comprehend the nature of his act and is the tool of others.”

(J) **Gluttony** : Dr Mercier says :—“Gluttony is a common vice among the insane people.”

(K) **Peculiarity** : An insane often thinks, dresses and acts peculiarly.

While observation should be directed relating to the points just noticed, it should be strictly borne in mind that the true test of lunacy is such behaviour or belief which the



social opinion declares to be lunatic behaviour or belief ; when no other explanation of such behaviour or belief the social opinion would admit except insanity. "Insanity" though a psychological concept, is also a social concept ; *psychology follows the social concept in study of the nature and boundaries of "Insanity."* The philosopher may not accept a prevalent social concept of "Insanity" but psychology is not concerned with the correctness of the social concept ; it studies things as they are and not as they ought to be. *No false irrational belief, no irrational foolish behaviour, no delusion, shared by the community at large, can be insane belief or insane behaviour or insane delusion.*

§ 3. The mental processes of the insane are the same as those of the sane. But owing to arrest in proper development or decay and deterioration of mental life or dissociation whether brought about by the two aforesaid causes or by conflict among the different impulses or complexes within the mind, or from any other reason, the results arrived at by the mental processes of the insane mind, come to be what the social opinion stigmatises as insane. An insane mind is a machine which does not turn out the quality of stuff bearing the brand of sanity.

SEC. 3.  
The mental  
processes of  
the Insane.

(1) The source of all activity is in the conative-affective aspect of the human mind. In the normal man, all the emotions, instincts, impulses original or acquired, work in harmony with the social demands for what the society regards as sane and sound. But in insanity, the conative tendencies and emotions may be disturbed in such a way as takes away this harmony. For instance, the strength of the social instinct which is called by Mr. W. Trotter as the herd instinct, may be materially diminished or may vanish from a part or from the whole mind. The individual uncritically without question accepts the beliefs of the herd or society and follows the rules manners, customs, ways, habits of the herd or society to which he belongs by birth and education, through the operation of this herd or social instinct. This instinct prompts the individual to think, feel and act with the society or herd to which he belongs. In insanity, a person may behave in any way against the manners, customs, beliefs, ways, habits of the society, if led to that course by any other impulse.



(2) Sensibility may be affected. A Lunatic taking filth and garbage shows that his normal taste and smell have been seriously affected.

(3) Insanity may be the result of disease of the memory. In the sane and normal man, memory does not always work properly, but nevertheless memory is sufficiently faithful for keeping the individual in such harmony with society as is required for sanity. But in the insane the derangement of memory may be such as to give rise to conduct which is insane. An insane man sees his friend but may forget all the memories which make him a friend, and the image of the friend may become associated with the memories of a bitter foe who in outward appearance much resembles this friend; under such a circumstance, he attacks his friend as a foe.

(4) An insane person may lose his power of attention and with it all self-control. When attention fixes itself upon a certain idea, there is a tendency to a state of monoidism and all rival ideas are ruled out. The idea thus fixed can without further opposition issue out in external conduct. But in a lunatic's mind, ideas may go on rushing like wild horses without controlling reins.

(5) All mental experiences in the normal sane man remain arranged in the mind as a system of relations, which enables the individual to maintain such adjustment with the social and physical environment as would be called normal and sane. This system of relations may be disturbed in the insane mind; these disturbances are only cases of dissociation. Cases of dissociation take place in the normal sane mind but such dissociations do not bring such conduct as would be called insane. From dissociation, hallucinations and delusions may arise. An idea remaining in the subconscious mind may become dissociated from the control of the conscious mind and may tyrannise; thus cases of obsession take place. In washing mania, one is compelled to wash his hands frequently though his conscious mind may see the irrationality of the course. Impulsive acts of Insanity, imperative ideas of the insane are only cases of dissociated mental states beyond the influence of controlling organic consciousness identified with the self. In automatic writing, in carrying on subconsciously a habitual course of conduct while the conscious mind is engaged other-

wise, we have cases of dissociation in the normal mind. Sometimes when talking on a subject, owing to a sudden diversion of attention, one may forget what he has been talking about ; this is a case of normal dissociation. But in the phenomenon of double personality, one system of ideas, experiences, memories becomes dissociated from another system of ideas, experiences and memories. Every mind contains more than one system of emotionally-toned ideas. In the normal sane mind, there are many such systems of emotionally-toned ideas which may be called "complexes." Each such complex is a system of ideas clinging to some simple or complex emotion and forming an organic whole with it ; *each such complex has a sort of individual personality*, it has its interest, its end or purpose and all judgments necessary for realisation of the end or purpose. In the normal sane mind, the various complexes work in such harmony as to give rise to sane conduct. In the normal mind, these complexes are partly responsible for the direction of our thoughts and actions. In every case of judgment or action, an individual is biassed to some extent at least by the complex which is related to the matter ; the truly impartial judge can not avoid the influence of the bias of the complex or complexes which come up on the occasion ; the influences of all the relevant complexes that should be called up on each occasion, lead a judge to decide justly so far his personal capacity for the occasion may do ; the harmonious bias of the whole leads to justice, while bias only of part may lead to injustice. In most cases, men judge and act according to the direction of the bias of their *complexes* that chance to come up ; ratiocination becomes a subsequent process of justification in these cases. The Insane also may act in many cases according to the bias of his complexes but these complexes may have lost the harmony of sanity and owing to dissociation, his ratiocination would satisfy him when it would not satisfy a sane man. In the insane mind, an emotionally-toned system of ideas or a complex may become separated from the personality and may follow a course of development separated from the personality ; this is a dissociated complex. The systematised complex of a paranoiac becomes insane by dissociation. There may be one or more dissociated complexes working in consciousness or one or more dissociated

complexes may retire from conscious plane and may work within the subconscious mind. A complex in consciousness dissociated from the personality but remaining within its awareness may appear as a spirit or satan or deamon or inward voice or some irresistible impulse or some dominant idea. It may also happen that the Personality is not aware of the dissociated complex. In case of conflicts among complexes, someone may become repressed and may then operate from subconscious mind, producing insane phenomena. Through dissociation, two ideas may be simultaneously present in the mind, but each remaining impervious to the effect of the other. A lunatic may be thoroughly convinced that he is a king though he begs for a pice and every day sweeps personally the room where he sleeps and may wear a piece of rag. Simultaneous belief in two contradictory propositions is also a case of dissociation like the aforesaid one, but such dissociation may be in sane normal mind when it does not produce anything which social opinion for the time being condemns as insane.

Every image of a percept if allowed to develop unopposed may produce the original perception (which is now a hallucination), and every judgment if unopposed, produces a belief in its reality. The function of Dissociation is to remove the effect of correcting experience. Hallucinations, Delusions, False beliefs thus spontaneously may arise in lunacy through dissociation.

The insane man fails to evolve a sane person's judgment and a sane person's conduct owing to derangement in memory or attention or associative link and owing to deranged working of conative-affective aspects of the mind. An insane person, otherwise, follows in his judgments the same procedure which the sane person follows. Dr. Bernard Hart says :—"The origin of abnormal mental processes is not to be found in any disturbance of the reasoning powers per se, but in the material which is presented to these powers. The lunatic does not believe that he is the son of George IV, because he has lost the capacity to reason, but because the proposition is presented to his mind in a light which makes it the only plausible and rational conclusion possible. He is only apparently irrational because the observer does not see the chain of mental processes which have produced the result, but only the result itself



standing as an isolated phenomenon without obvious basis or justification."

As in the dissociated mental condition of sleep, dreams may take place from vague sensations or fulfilment of desires either openly or in masked symbolism, similarly in the dissociated mind of the insane, in normal wakeful condition, mental states like dreams may take place which may lead to action.

§ 4. The medical examination of cases of lunacy is valuable in alleged cases of imbecility and idiocy arising from want of proper brain development and in cases of dementia arising from decay of nervous system. In Insanity, the following disorders of the nervous system may be found :

SEC. 4.  
Medical  
investigation  
of Lunacy.

(1) Alteration of the structure of the highest cortical centres.

(2) Temporary alteration of nutrition of the highest cortical centres from (a) disease of the body (b) poisons generated in the body (c) poisons coming from outside.

(3) Defective power of accommodation of parts of the nervous apparatus to the environment *i.e.*, not structural but functional disturbance of the nervous mechanism. From struggles among the complexes, three courses may happen : (1) A complex may be ruled out after conscious deliberate ratiocination. (2) Two rival complexes may continue to work in the same conscious mind, the personality being rendered blind to the inconsistency and contradiction involved in their simultaneous operation. (3) one may be repressed and may retire to sub-conscious mind, remaining thoroughly dissociated from the conscious Personality. Insane behaviour may spring on the happening of any one of the two last alternatives. Such insanity having arisen from mental causes, requires to be studied by the psychologist ; and the medical man can investigate such cases only by becoming a psychologist.

§ 5. Insanity may be feigned. To avoid being deceived by feigned insanity, it appears desirable to attend to the following points :—

SEC. 5.  
Malingering  
Insanity.

(1) In malingering there is usually a motive.

(2) The malingerer is at his worst when visited.

(3) The malingerer may declare himself to be insane whereas the true lunatic will not act in that way.

(4) The true paranoiac hides his delusions which are of slow growth.

From opinions expressed it appears that in insanities arising not out of purely mental causes, but arising from arrest in development or decay or degeneration of the nervous system but not arising from any near or temporary cause, the following additional points may be noticed.

(1) True insanity, except in some rare cases, usually begins slowly and with marked prodromata.

(2) True attacks of insanity, in most cases, begin with a change of manner, loss of appetite, sleeplessness and general malaise.

(3) Nearly all acutely insane persons are unable to sleep but a dement sleeps well.

(4) In feigned insanity, the characteristic facial expression is usually absent or if present, is not persistent.

(5) In feigned insanity, deafness and dumbness come in suddenly after the occurrence of the event likely to induce the individual to feign insanity.

(6) In feigned insanity, the symptoms are, as a rule, not uniform with any distinct type of the true disease. It should be however borne in mind, that variation from distinct type is often present in a case of true insanity.

In many cases, a satisfactory diagnosis between a feigned and true insanity, can only be arrived at by subjecting the patient to prolonged observation.

In the opinion of Dr. Ewens, a sufferer from commencing Dementia Præcox may be suspected of malingering

SEC. 6.  
Mental  
constitution  
of Idiots.

§ 6. (1) **Sensibility** :—In many, the sensibility is dull, a stronger impression being necessary for sensation. Many are deaf, some blind, and in some tactile sensibility is dull. Taste and smell may be taken to be bad where the idiots take filth and garbage.

(2) **Memory** : Recollection through law of similarity is bad. There may be very good recollection through the law of contiguous association in some particular line. An idiot may have wonderful memory for figures.

(3) **Attention** : The idiot is defective in power of attention. From defect of sensory perception, passive attention may be even defective, in which case, the idiots are unteachable.

(4) **Morality:** Dr. Ewens says:—"ordinary sentiments and affections are absolutely wanting, except, in the very highest of the feeble-minded type, yet some idiots appear to have a liking for one particular person. In moral qualities the highest evolution of mind, they are absolutely wanting. If able to speak, they have no idea of truth or right or wrong, and no real religious education is possible. They are irritable, intolerant, have no regard for others, are subject to violent passions; will steal, injure those weaker than themselves; commit sexual crimes and deeds of violence (arson is very frequently the crime of a feeble minded person); and they often show great and fiendish cruelty to animals and children. Though it is true that a few are quiet and docile, nearly all are destructive and quite unteachable."

§ 7. Many exhibit some curious habit—Dr. Ewens says: —"The body may be swayed from side to side the tongue constantly jerked by the hand, curious ways of hiding the face, stroking the nose and eyes may be noticed as well as some involuntary movements of the hands and fingers somewhat resembling those of athetosis. Coordination is always faulty and the finer adjustments of muscular action difficult, and the movements almost always clumsy. Grimacing and vacant laughter are very common."

SEC. 7  
Bodily  
expression  
of Idocy.

§ 8. The idiots, the imbeciles and the weak-minded are cases of failure in cerebral evolution, arising from imperfect development or disease of the nervous system dating from birth or early infancy, before the full evolution of the mental powers. Imbecility is mental deficiency milder than idiocy. The weak-minded and the imbecile may be taken to mean the same thing or a separate class may be made of the weak-minded indicating mental deficiency milder than imbecility. According to Dr. Ewens, the feeble-minded have no sense of honour nor regard for any one but themselves, the feeble-minded yield to gross dissipation, become the tools of designing people and simply give way to their lower instincts. The weakminded major is mentally a minor. Such psychically minors ought to get the protection of law extended to bodily minors.

SEC. 8.  
Idiots,  
Imbeciles  
and the  
weak-  
minded.

Th. Ribot says:—"Some imbeciles even have a particular talent for the mechanical arts, for drawing, for music or



arithmetic, which is all the more salient from its being surrounded by complete vacuity."

SEC. 9.  
Dementia.

§ 9. Dementia is loss of mind *i.e.*, loss of mental powers which existed before.

(1) Dementia of old age: In the course of decline of old age, in many cases, mental powers gradually decay.

(2) Dementia Præcox: It is a disease characterised by a progressive mental deterioration ending in more or less complete dementia. It commences in early life, though some are met in advanced life.

(3) Milder Dementia: Dr. Ewens says:—"a condition of weak-mindedness temporary or otherwise, is seen after *long and intense privations*, endured on long journeys, during prolonged sieges etc, in *the process of starvation to death*, from the *shock of intense strain, business crises, sudden emotional shocks* and after direct injury blow etc to the head."

(4) Dementia may be of every degree from a mere intellectual dulling to a complete loss of all intelligence, volition and memory. A dement sleeps well and obeys any order if he understands it. A melancholiac is always resisting.

SEC. 10.  
Stupor.

§ 10. Mental stupor is a link between dementia and melancholia. *In stupor, there is suspension of mental action* but not its destruction. Stupor is a defective power of reaction to ordinary surroundings. In stupor, a man for many months—even one or two years—would be practically in one position, motionless, silent, passing his excreta under him, without any reaction to sensory stimulation. Stupor proper seems to be a functional disease, and a proper case for trial of psychical treatment. The stupor of acute dementia should be distinguished from this functional stupor.

SEC. 11.  
Melancholia  
and Hypo-  
chondriasis.

§ 11. Dr. Henry Rayner defines Melancholia as "a painful state of consciousness unrelated and disproportioned to any painful mental impression or bodily condition, of abnormal persistence, and accompanied by excessive restriction or disorder of ideation and volition and by diminution of nutritional activities."

According to Dr. Henry Rayner, Hypochondriasis is the arrest of attention on the bodily sensations and may arise from the mere habit of self attention, from actual bodily disease or from central causes. It may vary from a mere

unreasonable fussiness about health to the most extraordinary delusions.

In melancholia of insanity, there are depression and great fear; these melancholiacs show a repugnance to food; many do not speak but when they speak, the speech is coherent though in a depressed tone; it is impossible to reason with the patient. The Hypochondriac always hopes to recover and welcomes medical aid but the melancholic feels certain that nothing can cure him.

§ 12. Exaltation and excitement are found in Mania. The characteristics of Mania are; Loss of selfcontrol; great emotional excitement, a rapid flow of ideas, hilarity and motor restlessness, easy excitability to anger or laughter or tears; failure of correct thinking.

SEC. 12.  
Exaltation  
and excite-  
ment.

(a) *Simple hysterical mania* without delusions, is most frequently met in persons of neurotic families; such persons have more than ordinary mental ability but with lack of persistence.

(b) *In simple acute mania* there is a defective control of thoughts and feelings which lead to incoherence in language and impulsiveness in act. Some outrageous violent act may be the first sign of acute mania.

(c) Impulsive mania is a sudden maniacal excitement without either a stage of depression or of exhaustion. Generally mania is preceded by a state of depression when there are physical and mental prostration and sleeplessness.

§ 13. From acute exhausting disease, sexual excesses, alcoholism, severe emotion or shock, the puerperal state, surgical operation or injury, may arise what is called "confusional Insanity" which is an acute mental disorder characterised by confusion of ideas, slow and incomplete thought-processes slow reaction to questions, want of grasp of circumstances, failure to recognise persons or mistakes in their identity, failure to record new impressions. The speech is slow and fragmentary and sentences are incomplete and incoherent. The account of confusional Insanity, is given here by following Dr. Percy Smith.

SEC. 13.  
Confusional  
Insanity.

§ 14. The systematised delusional Insanity or Paranoia, gives rise to delusions or beliefs, *not common to the race and incapable of being corrected by other experience of the*

SEC. 14.  
Systematis-  
ed delusions  
with halluci-  
nations.

*patient or by any argument.* In mania, melancholia, delusions rise from the predominant emotional state; in Paranoia, *the delusion is a fixed one and is reasoned out in a systematic manner.* There may be insane delusion without hallucination but hallucinations are the rule but follow delusion in Paranoia.

Paranoiacs act, speak, reason all other subjects properly and in every other particular may appear as normal sane beings. They have perfect memory. A whole social group may be victim of a fixed delusion reasoned out in a systematic manner, incapable for the time being, of being corrected by experience or by argument; but such a delusion will not be an insane delusion, as the social opinion instead of condemning it as insane and foolish, sanctions it as reasonable and true belief. A delusion becomes an insane delusion only by not conforming to the social ideal of sanity; an insane delusion is, therefore, an individual personal delusion and not a tribal or racial or national delusion. The aberration of the individual to a false belief condemned as insane by the group to which by birth and education he belongs, shows something abnormal in the individual constitution, and the falsity of the insane belief shows a downward departure from normal sane mental functioning.

SEC. 15.  
Impulsive  
Insanity.

§ 15. (1) Psychology can have no hesitation to admit the existence of irresistible impulses when, as a matter of fact, they actually exist. An impulse is irresistible in a person when he endeavours to resist it but fails or when the conscious mind gets no proper opportunity to resist.

Irresistible  
impulses.

(a) An impulse springing out of the subconscious mind, may be irresistible because the conscious mind *does not get the proper opportunity to interfere.* There may be cases in which an impulse of an emotion, translates itself into motor movements, with a rapidity like lightning, without allowing the reflective personal consciousness to judge and to make the will, intervene. After the performance of the drama of crime, the consciousness sees by retrospection everything. In these cases, the subconscious mind acts like a separate personality, making the action pass through the consciousness of the conscious personality.

(b) There are cases in which strong impulses come out of the subconscious mind and allow sufficient time to the



conscious mind to judge. The conscious mind hates and abhors those impulses and struggles to vanquish them. But the impulses haunt like obsessions and the conscious self in the struggle is vanquished, the dominant impulse realising itself into action. In these cases, the conscious self condemns an impulse but fails in the struggle to overcome the impulse. Dr. Mercier says: "some persons are assailed by most urgent desires, which they abominate, repel and resist, to do things which are criminal and which they abhor. They are constantly urged, by some internal irrational compulsion to steal, to injure themselves or other people, to set things on fire and to do other criminal acts." Dr. Ewens says:—"When all these various exceptions are accounted for, the number of persons who show a classical purely uncomplicated, uncontrollable impulse, to commit some one act more or less specialised and showing no other evidence of insanity, will remain very small indeed. *But such a disease undoubtedly exists.*" The mere fact that an impulse haunts the mind as an obsession does not make it uncontrollable; only when the conscious personality after a fair endeavour fails to vanquish the same, does it become uncontrollable. An impulse whose realisation can be prevented only by mechanical restraint by a third person, is also an irresistible impulse.

These irresistible impulses of both classes aforesaid may exist without any clouding of the intellect. Impulses which under certain circumstances, are controlled by normal sane persons, may not be controlled in insane persons owing to intellectual insanity which prevent the coming into operation of recollection and forces associated with the recollection, which in normal mind exercise the inhibiting action. These cases, to outsiders, may seem as cases of irresistible impulses but they are merely the effects of intellectual insanity.

It may be inferred that according to Dr. Mercier, all cases of uncontrollable impulses which come before court should be regarded as also cases of disorders of intellect. Dr. Mercier says: "in practice, we do not meet with insane people in whom defect or disorder of will exists as an isolated defect or disorder, apart from defect or disorder of intelligence; and this being so, the lack of knowledge is as efficient a test, and a

test much more convenient, more easily applicable and more reliable, than the lack of will."

Dr. W. P. Spratling, M. D., in "Epilepsy and its Treatment," while speaking of Pre-paroxysmal forms of mental disturbance, says: "The psychic aura that sometimes appears days before the seizure may be often regarded as a species of insanity. Persons in this state, as a rule, *know the nature and quality of the wrongful acts* they commit, but they suffer so complete a paralysis of the powers of inhibition that they are *incompetent to restrain themselves*."

Running  
amuck.

(2) In "Running amuck," a man suddenly attacks another with a deadly weapon, without any apparent motive or provocation; he then rushes about killing every one he meets at random. He does not attempt concealment and seems to have no object except to kill as many as possible. This may be the result of "uncontrollable impulse," springing out of the subconscious mind or may involve intellectual insanity. Mr. Mayne says:—"Dr. Chevers thinks that some few of these cases were probably cases of real insanity, while in others the mind may have become disordered by the constant use of ganja or similar drugs. In the majority no such explanation is possible. The criminals appear to have been persons who sometimes from continual pain and ill-health, sometimes from brooding on some real or fancied wrong, fall into a morbid state of misery, in which every thing external to themselves, appears to be their enemy. They become possessed with a longing to destroy and probably with an idea that the mere act of destruction would give them relief. In some cases, there seems to have been no ground even for this explanation. A savage nature suddenly broke through the feeble restraint which usually kept it down, and went on killing from a mere craving for blood."

Whether  
uncontroll-  
able impuls-  
es are insane  
impulses.

(3) So far uncontrollable impulses arise from intellectual insanity, they are certainly insane. Whether any uncontrollable impulse arising in a mind which is thoroughly sane so far intellect is concerned, can be called insane or not, depends upon the ideal of insanity prevailing in the community where the particular case occurs. The ideal of insanity is a social ideal; if the social opinion regards a case to be insane, it is insane.

(4) The problem, that where the social opinion does not regard all cases of uncontrollable impulses as insane, the social opinion should be educated and the ideal of Insanity should be extended to include all cases of uncontrollable impulses, is one relating to which the decision is not with the psychologist. The Legislator should determine whether all cases of uncontrollable impulses should enjoy the benefit of exemption from civil and criminal responsibility. It is a question of practical politics and practical social control whether the Legislators should be induced to widen the conception of irresponsible lunacy and to apply it to all cases of uncontrollable impulses. The medical man when he has extensive special experience of Lunatics, is competent to answer the question: whether uncontrollable impulses exist? The Legislators should decide whether these cases of uncontrollable impulses should be exempted from responsibility as cases of irresponsible lunacy. The medical man, as one interested in social well-being is free to decide, whether he will exert his influence to induce Legislators to exempt all cases of irresistible impulses from responsibility.

(5) Uncontrollable impulses are real facts. But whether Law would recognise their existence and admit them as defences against civil and criminal liability, is a different problem. When one is thoroughly sure from a full and complete life-long experience of a certain person that the latter suddenly performed an atrocious act entirely opposed to the character and nature of the actor without any motive in the conscious mind and executed it with extreme imprudence, and when after interrogating the actor he learns that the act took place against the reasonable resistance of the actor or without allowing the consciousness of the actor to intervene, and when the actor's statements may be reasonably believed, a conclusion may be reasonably formed that the actor was the victim of an irresistible impulse. But whether, having regard to the existing legal procedure and the constitution of law-courts, and to the existing state of Society, a law-court should be allowed to admit evidence for proving existence of an irresistible impulse in a particular case to extend exemption from liability is a different question. It may happen in a community that if no plea of irresistible impulse be admitted in

Uncontrollable impulses in law.



law-courts, only five cases of failure of justice may take place in a year ; but if the plea of irresistible impulse be allowed, there would be one hundred cases of wrongs per year for weakening of restraining motive and in another one hundred cases, wrong-doers would escape the penalty of law by taking the defence of irresistible impulse while of the five cases of failure of justice, justice can be done only in one or two cases. Under these circumstances, the policy of law may be not to allow the plea of irresistible impulse to be raised in any case. To what extent plea of irresistible impulse should be allowed for exempting from legal liability is a question for reformers of law, and the solution will be different in different circumstances. As regards existing law, the plea of irresistible impulse is no defence under the Indian penal code unless at the time of doing of the act, the offender by reason of unsoundness of mind, was incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

In *R V Stokes*, *R V Barton*, *R V Pate*, *R V Haynes*, *R V Burton*, *R V Leigh*, the defence plea of irresistible impulse was rejected ; the defence of irresistible impulse was admitted in *R V Jordan*, *R V Gill*. Sir James Stephen is of opinion that a person deprived of the power of controlling his conduct, should be exempted from punishment, unless the power of control was lost by his own default ; he is not certain that this view is opposed to English law and holds that if it is, the law ought to be altered. Dr. Oppenheimer says : "an ungovernable impulse, even if it has a real and not merely a hypothetical existence, is not, for judicial purposes, a *provable fact*, and that which is merely an article of speculative faith with some, by no means all, members of the medical profession, ought certainly not to be made the pivot upon which the question of guilt of a lunatic prisoner turns."

Judge H. M. Somerville, of the supreme court of Alabama in 1887, held that the true test of responsibility in cases of insanity is the power to refrain from doing the act.

§ 16. (1) According to Dr. Ewens, Moral Insanity is either (a) congenital moral imbecility or (b) an acquired one being a residuum of previous insanity or (c) as an effect of a head injury or (d) as a feature of simple mania or (e) as a feature of epilepsy or (f) one found in cases of one sided genius.

SEC. 16.  
Moral  
Insanity.

Kinds of  
Moral  
Insanity.

Dr. Ewens says that it has been noticed that some men of much phenomenal ability, usually however limited to one particular field, music, above all, and more rarely painting and some other capacities, are morally defective.

(2) The existence of moral insanity has been denied by many. The American Medical Association at a well-attended meeting held at Chicago in 1877, on the report of Dr. R. J. Patterson, by a unanimous vote decided that the experts of that continent did not recognise the existence of moral without intellectual insanity.

The view  
that moral  
insanity does  
not exist.

(3) The concept of "insanity" is a social concept. The concept of "wickedness" is a social concept. An insane act is not a wicked act. Partial or complete absence of moral emotions and sentiments with unaffected intellectual powers, shows a satanic character and not an insane character, in the current social estimation. A noble mind stirred by pity may call such a person "morally insane" by a reference to a personal individual ideal of sanity and not by reference to the current social ideal.

Mere partial or complete absence of moral sentiment or emotion, in popular ordinary usage or in law courts should not be called insanity. Such absence only removes moral motives of conduct. (a) A person though devoid of moral sentiments relating to certain spheres of behaviour, may possess a strong instinct of self-regard and keen intellect, and through help of his selfishness and intellect, he may keep himself outwardly in full harmony with social life and may escape detection when he departs from social life. There are many successful men of the world who never hesitate to sacrifice morality when that can be done with impunity if necessary in their self-interest; among these persons there are persons who are partially devoid of moral sentiment or emotion; the immoral deeds of such morally defective persons are wicked deeds and not insane deeds. In the worldly-wise morally-defective person, so far he behaves as such, no moral motive for behaviour operates. He may have full knowledge of what is legal and what is illegal but he follows law out of selfish personal prudence and does not hesitate to violate the same—though such violation is immoral also—where violation promotes his self-interest. (b) There is another class of persons who are partially devoid

of moral sentiment or emotion but of sane intelligence, whose intellect under the particular circumstances of their life and under the impulsion of their peculiar conative-affective nature, leads them to choose not the career of the worldly wise man of the world but a profession of crime. These anti-social professional criminals, the society condemns as of satanic wickedness; society does not look upon them as insane persons who should be pitied. (c) There is a third class of persons who owing to defect in development, or decay have defective intellect; such persons may be devoid of moral sentiment or emotion in a sphere, but they may fail to conform their behaviour to the social ideal owing to defective intellection.

(4) The moral ideal for which the society cares, is an objective ideal known by all members of the community of average normal intelligence. Any absence of moral sentiment or emotion only takes away a moral impulse or a moral motive of conduct. But the moral ideal enforced by the society can be followed from impulsion of the instinct of self-preservation and self-advancement. Any ignorance of the objective well-known prevalent standard of social morality by a member of the particular society can arise ordinarily only when the intellection is affected by insanity. If "Moral Insanity" means an incapacity to distinguish between right and wrong as understood in society, then such insanity should be treated as included in the wider concept of intellectual insanity. But if "moral insanity" means an incapacity not relating to formation of moral judgments but an incapacity to conform actual behaviour to the moral ideal of the society owing to defect in moral conative-affective aspect in our nature (*i.e.*, in moral instincts emotions, or sentiments), then for the purpose of a special science, dealing with all sorts of aberrations from the normal type such a concept may be created, but such a concept of moral insanity is not included in our current ordinary social concept of Insanity.

(5) Blindness about social moral ideal, may arise from disturbance in the normal functioning of our conative and emotional life.

§ 17. The general paralysis of the Insane is a nervous disease showing a progressive bodily and mental enfeeblement, affecting the cortex. Dr. Ewens says that this disease is



unknown among natives of India but is met with among Europeans quite irrespective of the length of their stay in India.

The 1st stage of the disease shows slight incapacity for occupation, muscular tremors, commencing affections of speech, mental symptoms of exaltation, depression or simple dementia, some loss of memory and general alteration in intellect.

In the 2nd stage, the patient becomes fat and gross ; animal instincts are uncontrolled ; the patient becomes liable to convulsions and more and more weak-minded.

In the 3rd and last stage, there are total mental failure, extreme muscular weakness, contraction of the limbs, loss of control over the sphincters, emaciation and formation of bed sores, loss of power of articulation, ultimately death from some complication.

§ 18. Dr. Conally Norman speaks of Litigious Insanity, SEC. 18.  
Litigious  
Insanity. He says: "Litigious Insanity is usually unaccompanied by hallucination. Full of persecutory ideas and insane suspicion, its unhappy victims live in an atmosphere of legal actions which last until the lawyers have sucked them completely dry, when they are prone to adopt means which the law does not approve to avenge their persecutions. In either phase, they are a source of great misery to their relations (whom they commonly ruin), and to their acquaintances, the most compassionate of whom are the most likely to be their victims." The passion for litigation rests on the instinct of pugnacity. When this instinct is strong and is not properly controlled, it may make litigation a delight and a passionate pursuit. Pugnacity brings the fierce joy of the warrior as well as the less fierce joy of the litigant. In most of their actions, man acts according to impulses, instincts ; and his ratiocination is a subsequent justification. When a person is always after litigations and keenly enjoys the same like a sportsman enjoying his sports, it only shows that the impulse of pugnacity is very strong and that for its satisfaction it utilises any and every occasion of litigation. But it would be improper to call it insanity.

Dr. McDougall says: "It is observable that, when a pugnacious people is forcibly brought under a system of civilised legality, its members are apt to display an extreme and to our minds, absurd degree of litigiousness."

Exercise of group-pugnacity in party-governments, in party quarrels of villages and cities, in party quarrels on social religious, literary, artistic matters, in the national wars, gives food to the impulse of pugnacity and by tiring the same in one way, may tend to make it less operative against individuals so long the weariness lasts and only in persons in whom the weariness occurs.

SEC 19.  
Unsound-  
ness of mind  
in Epilepsy.

§ 19. So far Epilepsy is a mental disease, it is a disease of the organic unity of the mind; it is a disease in which dissociated mental states happen, of which in case of complete dissociation no memory can be had by the normal conscious personality. The normal conscious personality in the light of memory, is a quite different person from the personalities of entirely dissociated mental states. The completely dissociated mental condition may be regarded as unconscious or as of such consciousness of which no recollection remains. Healthy mental life is properly co-ordinated life. Epilepsy appears in mind, as a breach of proper co-ordination. The large experience of Dr. W. P. Spratling M. D., as the Medical Superintendent of the Craig Colony of Epileptics, gives special value to his opinions. In his "Epilepsy and its treatment," he lays down the following as almost axiomatic facts pertaining to the effects of epilepsy on the mind.

(1) "Every true epileptic convulsion destroys or impairs the integrity of the mental faculties to some extent." (2) "such effects can not be measured by the degree of motor or psychic violence that accompanies the attack." (3) "There is also a form of *post-paroxysmal automatism* very similar in character to *psychical epilepsy*, characterised by acts apparently performed under the direction of conscious volition, seemingly logical and in perfect sequence, fulfilling a definite purpose; yet all through the performance of them the patient is no more responsible than if he were an inanimate machine. In this automatic state all the functions of the body, even that often times of speech, act in a coordinate and natural manner, although the field of conscious life is a perfect blank" (4) The effects of epilepsy on the mind, are temporary, prolonged and permanent. "The *temporary effects* include transitory states of disturbance that appear with the convulsion, are inseparable from it, because they are essentially a part of it,

and disappear with it. The *prolonged effects* include forms of disturbance that precede or follow the convulsion, lasting variable lengths of time, and assuming many different types, while *permanent forms of alienation* include all varieties of mental unsoundness, from simple loss of memory to complete epileptic idiocy, imbecility, and dementia."

Dr. Spratling regards *Psychic Epilepsy* as "a complete morbid entity in itself and wholly destructive of responsibility so long as it is present." According to him, it is a seizure of the mind, leaving the body, as a rule, undisturbed; it is a temporary blank in the field of consciousness, it is a pathological lapse in memory, varying from a second or two up to days and even weeks and rarely accompanied by muscular disturbance of any kind. He says that "psychic epileptics may commit all manner of crimes: theft, arson, rape, assaults, homicides." The following other mental states as due to Epilepsy, have been mentioned by Dr. Spratling:

(1) "*Epileptic automatism*. A condition of mental vacuity co-existing with natural bodily activity. This usually follows severe attacks, though it may be induced by those of milder form."

(2) "*Pre and Post paroxysmal mental disturbances*. These are usually in the form of the most violent and destructive mania, lasting anywhere from a few minutes up to days or weeks, and in rare cases even longer."

(3) "*Paroxysmal or epileptic mania*. This is always destructive and dangerous in character, and in which mental disturbance coincides with the fit. In cases in which it appears to be a substitute for the fit, it is known as the psychic epileptic equivalent."

(4) *Inter-Paroxysmal Mental states due to Epilepsy*.  
(a) "Transitory ill-humour and simple loss of memory for recent events, in other cases, for events regardless of the time of their occurrence. To these we must add as pronounced adjuncts of the epileptic's mental peculiarities: emotional irritability, impulsiveness, moral anergia, and incapacity for any form of valuable productive occupation dependent upon initiative in conception and consecutive activity."

(b) "Slight clouding or dulling of the intellect, as a whole, which often becomes more pronounced just before the fit."



- (c) Feeble mindedness.
- (d) Imbecility.
- (e) Idiocy.
- (f) Epileptic dementia.

(g) *Manic depressive insanity*: Dr. Spratling says:—"Manic-depressive states include the acute recoverable psychoses, mania and melancholia, under both simple and complex, and circular insanity."

(A) **Mental change in Preparoxysmal stage**:—Dr. Robert Jones says: "He may become *sullen and moody* and fall into *delusions of suspicion*; or he may give way to exceptionally *violent and sudden fury* which only those who have seen it can appreciate." If in the stage of uncontrollable, impulsive, paroxysmal violence, a fit occurs, a calm succeeds, excitement ceases and reason returns. Dr. Mercier says: "He may become *irritable, captious and quarrelsome*; or he may become dreamy, *lethargic and stupid*; or show some other *change in character*." Dr. Spratling says:—"The patient becomes loquacious, finds fault generally, magnifies trifles into matters of great moment, is touchy, suspicious, discredits the motives of all around him, is unable to sleep well, complains of disturbing dreams, suffers from headache, \* \* \* finally acquiring *pronounced* falsification of special sense perceptions." "Some have delusions of persecution, others illusions, while hallucinations of sight also occur usually just before the fit."

(B) **Automatism**:—Dr. Robert Jones says: "Another condition *which may occur* before the fit—which is in this case of a vertiginous and momentary character—is a *dazed and stupid dulness*, lasting for a few minutes only, rarely longer. \* \* He continues in a dreamy state and performs actions of which there is no subsequent recollection. For example, a student at college, entered a class other than his own, and without his gown; he then insulted the professor and immediately fell into a fit. On recovery he had no recollection of his delinquency." Dr. Savage is of opinion that this automatism occurs more often after than before the fit. The fits that usually accompany this epileptic automatism, being often of momentary duration, may not be noticed. Dr. Spatling says: "It has been my observation that the acts, mannerisms,

peculiarities, habits of vocation, and the like, shown by the individual in his normal state, can be carried over into and most perfectly repeated in the fullest detail in the automatic state, but that it is impossible for the automaton to carry the memory of such acts of this state into the conscious state beyond." He says that as a rule, the psychic or automatic epileptic, during the access of the attack is not in a normally receptive condition, so far as special sense-impressions are concerned and that psychic convulsions defy all ordinary methods of detection though they can be readily noted by one trained in the observance of their expression.

(C) **Post paroxysmal Hallucination and Delusion**

Dr. Robert Jones says: "Epileptics are more dangerous in this stage than in any other. They frequently have hallucinations which are systematized into delusions. They fancy that their friends or their enemies are about them, they can see and hear them; and they do most unaccountable things. They are more continuously noisy, violent and perverse in this stage than in the preparoxysmal; but they are less impulsive and explosive being guided more by hallucinations than by blind fury."

(D) **Post paroxysmal automatism:** Dr. Robert Jones says: "Actions in this state are also less conscious. This is the period of automatism, the dreamy state, the state of dual consciousness Dr. Maudesley asserts that this condition may precede or replace an ordinary convulsive seizure but as I have said automatism is almost always a post-epileptic phenomenon. This state much resembles somnambulism for there is partial suspension of consciousness in both \* \* There is no recollection of events that may have occurred during this period of imperfect consciousness, even when actions result in the direst results. Anger violence retaliation for imaginary wrong purposeless acts, assaults, murder, and indecent exposure have all been recorded during this phase."

(E) Serious **crimes** may be committed during epileptic automatism *following almost unnoticeable momentary fits*. Dr. Robert Jones says: "often the very cases in which the most serious consequences follow are those in which it is most difficult to prove medico-legally that disease sufficiently accounts for the acts." Dr. Mercier says: "The crimes whose connection

with epilepsy it is most difficult to establish are those that are committed in the condition known as 'epilepsie larvee' or masked epilepsy. In some cases of epilepsy, the epileptic, at the time that a fit is due, may do some extraordinary and outrageous act, that may be criminal, without having any definite fit, and yet without any knowledge or without any subsequent remembrance of the act." Dr. Robert Jones says: "when the mental symptoms replace the convulsive seizure, the condition has been described by Echeverria as intermittent mental epilepsy. It is the masked epilepsy or the 'epilepsie larvee' Dr. Robert Jones remarks that "it is now generally understood that a slight fit precedes this automatism." As the convulsion in minor epilepsy or petit mal, may be insignificant, it may not be noticed in many cases that a person is a victim of epilepsy. Dr. Mercier says: "In many cases, it is represented by a temporary twitching of the fingers; by a clicking of the tongue; by a pallor and lividity even or a mere turning of the eyes. Instead of falling, the epileptic may merely drop a little; his knees give way for a moment; his head droops; or without these signs, he stops little in his walk or in whatever he may be doing; and this is all." In cases of this type, from automatism, epilepsy would have to be inferred. Dr. Mercier says: "As a general rule, which is, however, not constant, post-epileptic automatic action is more conspicuous and prolonged after minor than after major fits; an action of this kind never, I think follows fits that are extremely severe. Another rule, which is far more constant, is that, when automatic action does take place after anyone fit, it follows other fits in the same person. Equally constant is the rule that the automatic action, if any, is always of the same type in the same case. The action is not necessarily the same, but it has the same general character. Lastly, the action in post epileptic automatism, is usually the caricature of some normal action that is habitual in the actor."

(F) **Epileptic Imbeciles.** Dr. Spratling says;—"Epileptic imbeciles, without exception, are mentally incompetent under the medical test of responsibility. Some, however, are shrewd enough to utilize their little knowledge in a manner to give their acts and assertions so fair a semblance of sanity and accuracy that they may be accepted as true by the layman or



under legal definitions of responsibility. It is to be regretted that they are not always judged from a medical standpoint alone." In Epileptic Idiocy Epileptic Dementia, there is virtually a total loss of the faculty of thought. In Epileptic dementia, the epileptic paroxysm may rouse up a flash of frenzy, producing a temporary psycho-motor storm leading to some murderous assault.

(G) **Unexpectedness** : This is found in epileptic's acts. Dr. Spratling says :—"The line of continuity of conduct with them in any radical way is seldom changed in a slow and orderly manner, but nearly always under a sudden impulse. In some inexplicable way the quick explosive violence of the fit itself seems to find parallels in action in most of the things that epileptics do out of the usual order."

(H) **Maligning** : Bevan Lewis says :—"The epileptic shows a tendency, akin to that of the hysteric, toward maligning. Both will falsely accuse of violence those of whom they are aggrieved ; will treasure up a tooth or willfully pull out their own hair by the handful and present it to countenance their charge, and will cunningly call to their defence certain delusional notions to which they may be prone during the period of their seizures, if they can benefit their position thereby."

Dr. Spratling says :—"Innumerable instances have come under my observation in which epileptics have charged their attendants with brutal conduct and in which investigation showed the charges to be either malicious attempts to injure others or the result of the perverted sensations so common in epilepsy." Dr. Spratling says further : "To prevent injustice to innocent persons, epileptic testimony needs to be received with great caution."

§ 20. (1) *Mania*. (A) Murders and violence are committed by maniacs from (a) a simple desire for destruction ; (b) in blind rage ; (c) from some delusion ; (d) under highly maniacal insanity caused by hempdrug intoxication. In the hempdrug intoxication insanity, an accidental possession of a weapon may suggest a crime. The new born infant may be murdered by the mother suffering from puerperal mania.

(B) In mania of mental exaltation, the delusion producing violence is *one of suspicion, persecution or conspiracy*.

SEC. 20.  
Violence in  
mental un-  
soundness.

Sometimes the insane mental excitement may pass away, leaving a well-marked and active delusion.

(2) *Imbecility*:—Arson may take place in the insanity of imbecility.

(3) *Melancholia*:—In the melancholia of mental depression, the lunatic may become the victim of a delusion of having committed some unpardonable sin and this may lead to violent conduct. The chronic melancholic brooding over wrong and subject to fits of rage on slight provocation, may do some deed of violence. He may kill his dear ones to save them from some apprehended calamity existing in delusion. Hadfield who suffered from the delusion "that his own wickedness was so extreme and portentous that it would produce the eternal damnation of the whole human race, shot at the king, for getting himself put to death under legal sentence as he was too conscientious to commit suicide."

(4) *Paranoia*:—The paranoiac suffering from a delusion of persecution may commit violence. He may commit violence from any other delusion.

Dr. Mercier says:—"The grave consequence of delusion and of the confusion of thought with respect to it, is that the sufferer is very apt to take desperate measures to counteract the plot, measures that often seem to the bystander to have little connection with the belief in the plot and not to be calculated to counteract it, even if it existed. Because in their belief A is plotting against them, they will assault not only A but B whom they do not associate with the plot, they are particularly apt to make attacks on persons in high places, in order that the notoriety they thereby achieve may draw attention to the case. A considerable proportion, perhaps a majority, of the murderous attempts made upon kings rulers, and persons of high position, are made by lunatics of this description."

(5) *Dissociated condition of epilepsy*:—In the dissociated mental condition of epilepsy, a deed of violence may take place. An epileptic mother daily cutting loaves for the table, may cut her own child as a piece of loaf in a state of automatism. Assault or some in human crime may be committed during an epileptic fit or during epileptic automatism.

(6) One suffering from *general paralysis of the insane* when suffering from impatience and irritability for non-recognition of his imaginary claim, may commit assault. According to Lyon's Medical Jurisprudence, violence of a peculiarly brutish and irrational character, may be committed in G. P. I.

§ 21. (1) **Hashish**: The mental disturbance created by Hashish intoxication, produces an enormous apparent prolongation of time and exaggeration of distance; during its full intoxication, seconds appear as hours and objects are seen as at a great distance,

SEC. 21.  
Effect of  
some  
Poisons  
on the Mind.

(2) **Alcohol**: Dr. Savage says:—"In England the increase of insanity is generally considered to vary directly as the increase in the consumption of alcohol; immediately or remotely it (alcohol) may cause insanity"

(3) **Morphine**: Dr. Savage says:—"It (morphine) gives rise to insane habit (morphinomania), loss of moral sense, of truth, honesty, and all altruistic feelings. It gives rise to sensory illusions and hallucinations, which may originate various forms of delusional insanity, resembling those produced by alcohol. Suspicion, jealousy, fear of detectives, are common in such patients. Visions of terrific kind may occur by night or day." According to Dr Ewens, the slave of morphine habit will lie, steal, fawn and scheme to obtain the drug; is selfish, fault-finding, believes or rather asserts that people are against him, doubts the words and acts of relations and friends, loses all his finer perceptions, is incapable of feeling for others.

(4) **Opium**: Dr. Ewens says:—"Taken in small doses, it (opium) does not the slightest harm" "It is obvious that a man, for several hours daily fuddled with opium, is incapable and useless, but besides that such a man becomes selfish, neglects his duties, wastes his time, squanders his substance to procure it, is oblivious of the needs of his family and the calls of duty."

(5) **Indian Hemp**: Dr. Ewens says:—"The results of *hemp-drug excess* may be, simple intoxication, A mania transitoria, Acute mania, chronic mania with delusions, Dementia.

The immediate effects of any large dose of hemp is first dizziness followed later by excitement, delirium, hallucinations of a pleasing nature, visual and auditory, a rapid flow of ideas, a state of ecstasy, a great inclination to muscular movements



with a marked tendency to acts of wilful damage and violence. A state of recklessness and disregard for danger and consequences, the whole followed later by deep sleep and forgetfulness of all but the initial symptoms."

(6) **Fever-poisons :**

(a) Acute mania or acute melancholia may happen after an ague.

(b) Dr. Savage says : "permanent mental weakness, with some definite changes in the brain tissues, has been described as a result of prolonged exposure to malaria."

(c) Dr. Savage says : "Influenza may give rise to insanity in highly neurotic subjects."

SEC. 22.  
Epochal  
insanities.

§ 22. Each epoch of life has its proper psychology. The epochs have their insanities : Insanity of puberty and adolescences ; insanity of Pregnancy ; Puerperal insanity ; Lactational insanity ; climacteric insanity ; senile insanity.

Dr. Clouston says :—"That each epoch of life has its proper psychology is attested throughout our literature. Poetry, the drama and fiction have all found their themes in the various thoughts, feelings and actions characteristic of youth, of maturity, and of old age. Psychiatry, too, finds some of its most subtle and interesting studies in the mental and bodily symptoms and in the prognosis and treatment of the insanities of puberty and adolescence, of pregnancy, of the puerperium, of lactation, and of the climacteric period and old age ; for these are the chief epochal mental disturbances."

SEC. 23.  
Mental  
influence  
and sun as  
causes of  
Insanity.

§ 23. (1) Insanity may result from influence of one mind upon another mind. Dr. Savage says :—"In some cases, the form of insanity seems to be transmitted directly ; this is seen in some cases of melancholia and in some of the systematised delusional insanity ; in these latter instances similar minds living under similar conditions originate similar delusions."

(2) over-exposure to the sun may give rise to insanity. Dr. Savage says : "various degrees of mental weakness may follow an over-exposure to the sun ; this may range from simple loss of recent memory to stupor or dementia."

SEC. 24.  
Neurotic  
mind :  
Eccentric  
mind.

§. 24. (1) **Neurotic mind :** A neurotic mind though not a fully healthy mind, may be a sane mind. A neurotic person is one whose nervous instability causes him to react unduly to stimuli, the undue reactions are called nervous symptoms.

Genius not infrequently found in neurotic families, is not the genius which shows regular, systematic, controlled hardwork and steady application, but a genius arising from uncontrolled reaction to stimuli. Dr. Savage says: "Some neurotics have no sense of truth or honesty and no altruism, they are cruel, destructive and sensual. In some such patients special aptitudes appear to be developed at the expense of the other faculties; of such aptitudes are the memory of isolated facts, the power of musical reproduction and of rapid mental calculation; thus many musical prodigies and calculating boys are weak in mind or without moral sense."

(2) **The eccentric mind**: Eccentricity consists often in disregard of the smaller conventions of society; the eccentric knows the nature of his acts, which are not injurious to society. In the majority of cases, the eccentric does not pass into insanity.

§ 25. There is no necessary connection between unsoundness of mind and crime. Crimes are committed by the insane, the idiot, the epileptic as well as the sane and normal people. A person may not commit a single crime during a life-long insanity while a crime may be committed during a transient lunacy of a few minutes or seconds. The connection between unsoundness of mind and crime should be sought in the following factors:

SEC 25.  
Unsound-  
ness of mind  
and crime.

(1) One cause of crime in Insanity is in the tendency to cause deeds of violence when such tendency develops.

(2) An insane owing to disintegration of memory and association or an idiot owing to defective mentality may fail to see the natural and probable consequences of his act and may thus commit crime. Such a crime is the case of the idiot who cut off a sleeping man's head to enjoy his surprise when on awaking he would not find his head. Sexual impropriety may be committed in G. P. I. partly from lack of judgment and partly from sexual irritability. Feeble-minded persons, in many cases owing to incapacity (during temptations) to realise fully the consequences of their acts commit crimes.

(3) Insanity by causing illusion or hallucination or delusion may disable a person to judge the nature and consequences of his act and may thus lead to crime. Dr. Mercier says:—"Every now and then a general paralytic is given into custody



for appropriating some article to which he believed he had a valid title."

(4) Insanity by producing uncontrollable impulses or abnormal reactions to normal stimuli, may lead to crimes. Dr. Mercier says:—"Murders committed by insane persons from motives of vindictiveness, are often provoked by incidents of a trifling character, that would arouse in a sane persons either no vindictive feeling at all or at most a slight and transient annoyance. A youngman shot his sister through the head and killed her alleging as a reason that she had not passed him the newspaper at breakfast the day before." Dr. Mercier mentions the case of a man who killed his sister's child in revenge for a row that he had with his brother the day before.

Drunkenness, by producing temporary unsoundness of mind, leads to commission of crimes. Dr. Mercier in *Crime and Insanity* says:—"The insanity that is most frequently associated with crime, and directly leads to crime in a large number of cases, is undoubtedly the insanity of drunkenness. In nine years one and three quarters of a million of persons were sentenced, in courts of summary jurisdiction in this country for offences committed during drunkenness."

(5). In epileptic automatism, the controlling influence of the whole mind is absent. The automatic act may lead to a crime or may not lead to a crime. When it leads to a crime, there is nothing to inhibit the same. The wild frenzy of epileptic mania, is also a state of dissociation.

SEC. 26.  
Relation of  
intellectual  
insanity to  
feeling and  
conative  
aspects of  
the human  
mind.

§ 26. Under the Indian Penal code, nothing is an offence which is done by a person who, *at the time of doing it*, by reason of unsoundness of mind, is *incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law*. The exception has been, thus, extended to intellectual insanity. This intellectual insanity may arise from unsoundness of the mind in its conative side and in its affective (feeling) side. The intellect suffers when memory fails to bring up the proper and necessary recollections for sane conduct at the requisite moment. (a) The proper functioning of the process of recollection may be prevented by some conation (impulse) or some feeling appearing in abnormal strength (b) The proper functioning of recollection may be also prevented by death or weakness of some normal impulse or



normal feeling. The moving force of all intellectual life comes from our conations and feelings. The normal conations and feelings of the normal man, make the intellectual life move in harmony with the requirements made by society for sanity. But when the normal impulses and emotions either owing to morbid strength or morbid weakness react abnormally, the intellectual machinery then also tends to move irregularly. The intellectual machinery is controlled by voluntary and involuntary attention and by the recollections of past experiences; the machineries of attention and recollection, are highly dependent upon the impulses and emotions stirring up within the mind.

As the normal man's body grows according to a type, similarly the normal man's emotions and conations grow in human society in such a way as to produce in the individual intellection and behaviour in conformity to the prevalent social type of sanity in intellection and behaviour. Nature tends to create the sane mind; the insane mind is a failure in the creative work of nature—a downward regression from the normal type.

The light of intellect changes with the degree of attention. When the attention is very weak, the light is dim and hazy; when there is no attention, there is no light. But the light or attention may be strong; but the machinery of recollection having become disorganised, the relevant facts for proper judgment and proper action, may not at all come within the field of vision of the light or attention. In determining the condition of the mind at the time of doing an act, a very difficult act of inference is required to be made; all can not rightly make such inferences. To arrive at a conclusion by a reference only to the judge's personal standard of mind in his cool deliberation, may lead to serious mistake.

The following view of Sir Fitz James Stephen, is important; "The man who controls himself refers to distant motives and general principles of conduct, and directs his conduct accordingly. The man who does not control himself is guided by motives which immediately press upon his attention. If this is so, the power of self control must mean a power to attend to distant motives and general principles of conduct and to connect them rationally with the particular

act under consideration ; and a disease of the brain which so weakens the sufferer's powers as to prevent him from attending or referring to such consideration or from connecting the general theory with the particular fact, deprives him of the power of self-control. Can it be said that a person so situated knows that his act is wrong? I think not, for how does any one know that any act is wrong except by comparing it with general rules of conduct which forbid it, and if he is unable to appreciate such rules or to apply them to the particular case, how is he to know that what he proposes to do, is wrong?"

SEC. 27.  
Legal  
Responsi-  
bility and  
Insanity.

§ 27. (1) Legal Responsibility is a legal concept, to be determined in the administration of law, by law as it exists. An insane person may be legally responsible, if the law makes him responsible. The Chinese law treats the criminal lunatic as an ordinary wrong-doer.

(2) The problem as to whether and to what extent, legal responsibility ought to be attached to insane conduct of insane people, belongs to the science of legislation.

SEC. 28.  
Extent of  
unsoundness  
of mind

§ 28. (A) Insanity may affect a part of the mind or the whole mind. Dr. Mercier says :—"It may be so limited as, in the field of judgment or belief to produce but a single delusion, leaving the power of judgment as to other beliefs apparently unaffected." But the doctor (Dr. Charles Mercier) says :—"There is not, and there never has been, a person who labours under partial delusion only and is not in other respects insane."

In the answers of the Judges to the questions set them by the House of Lords in 1843 relating to Reg. V. M'Naughtan, there was reference to partial insanity. The answer to the 1st, question ran thus: "Assuming that your Lordships enquiries are confined to those persons who labour under *such partial delusions only, and are not in other respects insane*, we are of opinion that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion of redressing or revenging some supposed grievance or injury or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law, by which expression we



understand your Lordships to mean the law of the land." The 4th, question was : "If a person under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused.?" The answer ran thus. "The answer to this question must of course depend on the nature of the delusion ; but making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusions exist were real. For example, if under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life and he kills that man, as he supposes in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune and he killed him in revenge for such supposed injury, he would be liable to punishment,"

Extensivity may be considered in two ways :—(1) In respect of the three aspects of intellection, conation, feeling of the same mental state (2) In respect of one or more or all mental states. (1) on the question whether insanity in respect of one of the aspects of intellection, conation, feeling, is possible without any disturbance in the other aspects, the proposition should be accepted, that in respect of the one and the same mental state, any disturbance in one aspect can not leave untouched the other aspects. The three aspects form one organic unity (2) But one mental state may be affected without any disturbance in the other mental states ; a mind may be sane except being subject to an isolated delusion or delusions. In the mind, there are innumerable complexes. One complex may be a diseased insane one, while the other complexes are thoroughly sane. Chief Justice: bockburn in *Banks v. Goodfellow* says ;—"There are often on the other hand, delusions which though the offspring of mental disease, leave the individual in all other respects rational and capable of transacting the ordinary affairs and fulfilling the duties and obligations incidental to the various relations of life." In ordinary sane persons, reason does not operate equally in all departments of life. A man may be shrewd, intelligent and wise in one department, whereas in another department, his beliefs may be foolish. As the



light of intellect does not illuminate equally all chambers of the mind, similarly the light of conscience may not be equally illuminative or may not be of equal practical operation in all departments of one's life. The field of mind is not a plain but is an uneven surface where there are dark abysses as well as illuminated hill-tops. A delusion in the realm of judgment is what an hallucination is in the realm of perception. His experiences in the light of which, the nature of a belief would appear to be a delusion, fail to operate relating to the particular subject; he suffers from a mental blindness relating to the particular subject like colour blindness. While the experiences which would have corrected the delusion, fail to operate, some other experience covers the space thus left free from the operation of the experiences which would have corrected, and thus gives rise to a delusion.

(B) Insanity may vary in duration. Abnormal dissociation giving rise to temporary insanity, may take place from some temporary functional disturbance in the working of the mind. A man may be insane one day on one occasion of his life and may never be insane in the whole period of his life-time. Dr. Mercier says:—"In duration, it may vary from a few seconds to a life-time."

(C) Extent of disturbance from the existence of a single delusion: To determine the extent of disturbance from the existence of a delusion, it is necessary to find out under what mental processes, the particular delusion on the particular occasion has come to exist. Only on finding out the conditions and circumstances of the particular delusion, can the extent of the disturbance be properly gauged.

(D) Under the law of British India, the burden of proving the special circumstance that at the time of doing the offence, the offender lunatic, by reason of unsoundness of mind was incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law, is upon the accused. From the pure fact that the accused had insane delusion in one mental complex, no inference can be drawn as to insanity relating to other mental complexes..

SEC. 29.  
Lucid Inter-  
vals.

§ 29. "By a lucid interval is not meant a concealment of delusions but their total absence, their nonexistence in all circumstances, a recovery from disease and subsequent

relapse." Under the English law of insanity, even in the case of an acknowledged lunatic, the offence is presumed to have been committed in a lucid interval unless the contrary be shown.

Dr. Savage says :—"Many patients in asylums suffering from recurring attacks of mania or malancholia and some suffering from folie circulaire or epileptic insanity, may be quite sane for long periods or sane enough to make a will." Dr. Oppenheimer says :—"But lucid intervals being not the rule, but rare exception, it is certainly not in accordance with commonsense to presume their existence at the time of the act in the case of lunatics \* \* \* in the united states the principle strikes root that "where previous insanity is proved, the persecution must show that the crime was committed during a lucid interval."

§ 30. The behaviour of many insane persons may be controlled by threat of punishment or hope of reward. Dr. Savage says :—"It must be admitted that in the majority of cases of insanity ordinary motives appeal to the person of unsound mind in a way precisely similar to that in which they affect the sane. There are patients in asylums who can be guided by anticipated pleasure or by threatened deprivation of enjoyments and therefore who must be looked upon as so far controllable if not responsible \* \* \* In fact, in this way alone hospitals and asylums can be managed for the benefit of the patients."

SEC. 30.  
The effect of  
Punishment  
on the  
Insane.

§ 31. Section 84 of the Indian Penal Code says :— Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law." *Nature of the act* refers to physical nature and not to moral and legal nature ; the reference is to the system of relations in the universe, which make the act what it is. Full knowledge of all the effects and consequences and relations of the act, in the whole universe, no man can have. Only knowledge of such physical effects and consequences and relations is necessary, as give rise to the relevant moral or legal value of the act. "Moral and Legal nature" is referred to in the expression "that he is doing what is in either wrong or contrary to law." Knowledge of

SEC 31.  
"The nature  
of the act."

the nature of the act includes knowledge of the following facts :—

(a) Knowledge of what the actor (*i.e.*, subject) really is and of his relation to the act; insanity should not cloud his knowledge of himself or knowledge of his relation to the act.

(b) Knowledge of the nature of the objects upon which he acts.

(c) Knowledge of the operation of the physical agencies that are set in motion.

(d) Knowledge of the existing facts which are ingredients in the corpus delicti: when a lunatic steals a thing thinking it as his own property, there is absence of the knowledge necessary to constitute the offence.

SEC. 32.  
Hypnotic  
Compulsion.

§ 32. Hypnotic suggestions work through the sub-conscious mind. The conscious mind when in post hypnotic free stage it carries out a hypnotic suggestions it does it as of his voluntary choice. The suggestions of wakeful life also influence in this way.

Dr. F. H. Gerrish M.D., L.L.D., says :—"Every real authority on modern hypnotism says emphatically that a suggestion that offends the moral sense of the person hypnotized, is either disregarded or has the effect of rousing the subject immediately." If this view holds good in all cases, a person by post-hypnotic suggestion can not be made to commit a crime against his moral nature and settled character. Mr. B. Sidis: M.A. Ph. D. in his "Psychology of suggestion" says :—"The sub-waking self is devoid of all morality; it will steal without the least scruple, it will poison, it will stab; it will assassinate its best friends without the least scruple. When completely cut off from the waking person, it is precluded from conscience." These remarks only show that crimes may be committed in hypnotic condition. But in the case of post-hypnotic suggestions, the suggestions are worked out when the controlling normal self is fully awake.

SEC. 33.  
Divergent  
standards of  
Insanity  
under diver-  
gent legal  
require-  
ments.

§ 33. (1) Section 84, Indian Penal Code, makes insanity as an excuse for an offence when the insanity is an *insanity of knowledge* depriving capacity of knowledge, relating to *nature of the act* or relating to *wrongful or illegal nature of the act*. The knowledge test of exemption is seen in the answer of the Judges to the questions Nos. 2 and 3 set by the House of



Lords in 1843 in Reg. V M'Naughten. The Judges said, "to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act the accused was labouring under such a defect of reason, from disease of the mind as *not to know the nature and quality of the act* he was doing, or, if he did know it that he did not know he was doing what was wrong."

(2) A lunatic who is not prevented by his lunacy from understanding the questions put to him and giving rational answers to them, is regarded as a competent witness under the Indian Evidence Act. A Judge should consider how far from the nature of lunacy in a particular case, a lunatic witness's apparently rational answers can be relied upon. Capacity to depose.

(3) **Testamentary Capacity:** Under the Indian Succession Act, every person of sound mind and not a minor may dispose of his property by will; if the deaf, or dumb or blind are able to know what they do by it, they can make a valid will; a valid will may be made in a lucid interval; no person can make a will while he is in such a state of mind whether arising from drunkenness or from illness or from any other cause, that he does not know what he is doing. "Sound mind" has not been defined in the Indian Succession Act.

*Sound knowledge of the nature of the act* seems to be the test of sanity for the purpose of making a will. This knowledge involves (A) correct Knowledge (1) of the subject or testator, (2) of the properties of the subject (3) of the friends relations and other persons standing in various relationship to the testator, (4) of the relations of these persons to the testator (5) of the effect and consequences of the particular will; this knowledge involves also (B) absence of any insane mental state which may affect correct knowledge and correct valuation of the elements mentioned in (A).

A testator may have capacity to make the will actually made, though he may be incapable to make a more complex will; the sound mind need not be a perfectly balanced mind; insanity not in the line of the bequests made in the will, is not fatal; mere weakness of understanding is no objection to a man's disposing of his estate by will; every unfounded belief is not an insane delusion but such unfounded belief which can be entertained only by an insane person; when belief in

witchcraft prevailed in Scotland, the judges and the members of the Jury, who believed in witchcraft had no insane delusion; but if now a Judge in Scotland believes in witchcraft, that would be an insane delusion. In *Hope v. Campbell* (2 C.W.N. cccxiii) belief in a direct command from God was held as an insane delusion, but in India, it would be certainly wrong to make such a finding. Mere eccentricity does not of itself amount to insanity. There is no incapacity if in making a will one is moved by capricious, frivolous, mean or even bad motives.

(4) In litigations, incapacity to protect interests in litigation by reason of unsoundness of mind, is a good test. Order 32 Rule 15 C.P.C. runs thus: "The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons *adjudged to be of unsound mind* and to persons who though not so adjudged, are found by the court *on enquiry*, by *reason of unsoundness of mind* or mental infirmity, to be incapable of protecting their interests when suing or being sued." The Indian Civil Procedure Code, thus, requires appointment of guardian for managing litigation when a person owing to unsoundness or infirmity of mind is *unable to protect his interest in litigation*.

(5) *Incompetency to manage* is main principle in the definition of Disqualified Proprietors under section 6 of the Court of Wards Act 1879. Disqualified proprietors include persons adjudged by a competent civil court to be of unsound mind and incapable of managing their affairs; persons adjudged by a competent Civil Court to be otherwise rendered incapable by physical defects or infirmities of managing their own property, females declared by the court incompetent to manage their own property. There may be incompetency to manage, though the mind is otherwise a sound one.

(6) *Indian Lunacy Acts*: In India for management of Lunatics properties, there is the Lunacy (Supreme Courts) Act (Act No. XXXIV of 1858) and the Lunacy (District Courts) Act (Act No. XXXIV of 1858). Under both these Acts, unless the contrary appears from the context, the word "Lunatic" means, any person found by due course of Law to be of unsound mind and *incapable of managing his affairs*.

(7) *Marriage*: Incapacity to understand the nature of the marriage contract and of the responsibilities and duties it



creates, invalidates a marriage in England in the case of a Lunatic.

(8) *Indian Contract Act.* Section 11 says: "Every person is competent to contract who is of the age of majority according to the law to which he is subject and *who is of sound mind* and is not disqualified from contracting by any law to which he is subject." Section 12 says:—"A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, *he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.* A person who is usually of unsound mind but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind but occasionally of unsound mind, may not make a contract when he is of unsound mind." For the purpose of contract under the Indian Contract Act, sanity is confined to *capacity to understand the contract, his capacity to form a rational judgment as to its effect upon his interest.* Under this definition, an illiterate person belonging to a simple primitive community though thoroughly sane in the community to which he belongs, may cease to be sane in relation to a very complex contract entered into with a member of a highly-evolved complex community. A drunken man if incapable of understanding the contract and of forming a rational judgment as to its effect, will not be liable for his contract, but a drunken person is liable for his crime on all occasions under the Indian Penal Code, save when the drink was administered without his knowledge or against his will.

(9) **Torts.**—A Lunatic will not be liable for *fraud or malice* unless the Court be of opinion that he was *capable of conceiving fraud or malice.* A Lunatic is liable when he possesses the state of mind, which makes a sane person liable. Insane delusion is no defence in cases of wrongs of wilful interference with the person, property, reputation or other rights; but when the lunatic is unable to entertain the intention of doing the particular act, he will not be liable. Selfimposed drunkenness is no excuse for tort. A person sane enough to be liable under the criminal law will probably be liable for any kind of tort.

(10) **Consent of a Lunatic** :—Under section 90 I. P. C., a consent is invalid if given by a person who "from unsoundness



of mind or intoxication, is unable to understand the *nature and consequences of that* to which he gives his consent." No man can know the entire nature and the entire consequences of his consent. It is sufficient if he knows *all the relations of the act to all facts which he values or which are valued by the normal man of the community to which he belongs*. Under the Indian Law, an idiot young female though she may give the consent of a female animal to sexual intercourse under the spur of sexual instinct, may fail to give the legal consent which would be that of a normal female of human society.

SEC. 34  
Normal and  
Abnormal  
immature  
mind.

§ 34. Normal immaturity is recognised by law. In idiocy, owing to arrest of development, abnormal immaturity is found.

Under the Indian Penal code, nothing is an offence which is done by a child under seven years of age; or above seven years of age and under twelve when he has *not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct* on that occasion.

Under the Indian contract act, the contract by a minor is void and under the Indian succession act, the minor can not execute a will. Under the Civil Procedure code of India, a minor can be plaintiff only by a next friend, and a guardian is required to be appointed when he is a defendant. Under the Indian evidence act, an immature mind is competent to depose unless the court considers that he is prevented from understanding the questions put to him or from giving rational answers to these questions by tender years.

In idiocy a person may be old in body but an infant in mind.

SEC. 35.  
A suggested  
classification  
of Insanity.

§ 35. The following classification has been suggested by Drs. Clouston and Mercier for the Educational committee the Medico-psychological Association, and approved by Dr. Savage:

- |  |                                |
|--|--------------------------------|
| (1) States of mental weakness                  | { Primary { Idiocy Imbecility. |
|  | { Secondary { Dementia.        |
| (2) Stupor                                     | (3) Depression.                |
| (4) Exaltation and Excitement                  |                                |
| (5) Systematised delusions with hallucinations |                                |
| (6) Impulsive and Moral Insanity               |                                |
| (7) General paralysis.                         |                                |

## CHAPTER XIV.

### NARRATION OF THE WITNESS TO THE JUDGE AND THE JURY THE PROCESS OF MAKING IT RECORDED EVIDENCE.

§ 1. In taking action upon the written record of evidence of a witness relating to his sensible experience, the following questions require to be decided: SEC. 1.  
Record of  
evidence.

(1) Whether the witness had the capacity to have the sensible experience?

(2) Whether the witness had the Opportunity to have the sensible experience?

(3) Whether the sensible experience as perceived by the witness in his subjective consciousness agreed with the objective phenomena as they happened?

(4) Whether the recollection of the witness exactly corresponded with his perception of sensible experience?

(5) Whether the witness correctly reported his recollection?

(6) Whether the Judge correctly understood the report of the witness?

(7) Whether the Judge correctly recorded what he understood to be the report of the witness.

§ 2. Narration is external conduct or external behaviour. SEC. 2.  
Recollection  
and  
Narration.  
Oral narration is muscular activity. Written narration is muscular activity, Narration by means of any sign language is also muscular activity. The process of narration or communication is always external conduct or behaviour.

The fully-developed type of narration is like fully-developed type of voluntary conduct. The thoughts intended to be expressed control the narration; the expression and communication of the thoughts intended to be conveyed, is the end or purpose of the narration. In this process, there may

be choice of appropriate language to make a correct expression. Some suggested bad language may be ruled out, and the expression adopted may be accepted in preference to another inferior claimant which could not express correctly. Choice, deliberation take place in the selection of means, the particular form of expression.

But this fully-developed process of narration is not followed on many occasions. We found in our chapter on Human behaviour about the existence of automatic, instinctive, reflex actions, about the existence of sensori-motor, perception motor, ideo-motor activities. As in our conduct, our behaviour does not always conform to the fully-developed type of voluntary action, so in our narration, the process does not always conform to the fully-developed type of the process of narration.

The answer to a question about a past experience the reply to which requires revival of past experience through the process of recollection, may come in one of the following ways:—

(1) There is conscious spontaneous recollection or recollection with effort followed by expression of the same in language, deliberation and choice being used in the process of use of language.

(2) In the process of recollection, there may be rivalry among memories and selection after deliberation of the correct one, followed by expression in the form as in (1)

(3) Whatever may be the form of recollection, the expression may be spontaneous and automatic.

(4) In, (1), (2), (3), the expression follows the recollection. But it may be that expression and recollection come out simultaneously, the consciousness of recollection taking place with the expression in language.

(5) It may be that the expression automatically leaps out like reflex motion, and only after use of the expression, one is conscious of the meaning of the expression as his recollection.

This last form of expression is not an abnormal form but on many occasions takes place. In this form, the narration is controlled by the subconscious mind; the recollection remaining in the subconscious stage. If this subconscious stage is unconscious cerebral activity, then it is a case of the human brain producing the muscular activities of narration



without bringing the recollections into consciousness; the meaning flashes after the expression.

In actual narration, all these processes may become mixed up, on giving place to another, each particular form operating for a certain time.

§ 3. If a witness recollect correctly his past experience, his narration may become bad on either or both of these two grounds:—(1) His incapacity to express correctly his recollections. (2) His dishonesty which leads him to report incorrectly his correct recollections.

SEC. 3.  
Moral and non-moral grounds of wrong narration following correct recollection.

This dishonesty arises from the interest of the witness to depose in a certain way. This interest or bias operates subconsciously or consciously. Working subconsciously, it causes wrong recollection as well as wrong narration; working consciously it leads to wrong narration of a correct recollection: this latter conduct is conscious dishonesty or true dishonesty of the witness.

But in the form of narration in which narration springs at once from the subconscious mind, conscious recollection either accompanying or following it, the subconscious mind under the influence of bias or interest, may give a narration which favours the bias or interest and not truth; in this condition a witness, if in hurry or in careless mood or if of hasty disposition, may consciously but honestly believe on the occasion this narration to be correct, though afterwards he might find that the narration was incorrect. The subconscious mind may perjure under bias or interest in spite of the best effort of the conscious mind for truth and conscious mind may fail to detect the perjury. In the trifling and unimportant concerns of life and in much of our every day idle gossip or recreation gossip or when talk is resorted to for its pleasure, conscious alertness of the mind is allowed to go partially to sleep; and then the subconscious mind comes to take a greater share and guided by various impulses, emotions, may intrude many lies into the narration. One who wants to talk much and often, for the pleasure of talking, and allows his subconscious mind to move spontaneously and automatically, always exposes himself to become a speaker of many lies. A witness who allows his watchful critical consciousness to go partly to sleep and allows passively his subconscious mind

to give out the answers, may if under the influence of bias, without detecting on the occasion, find himself in the jaws of falsehood.

SEC. 4.  
The problem  
of Nonmoral  
grounds for  
incorrect  
narration.

§ 4. (1) In auditory aphasia there is loss of memory of sounds. A witness may to a slight extent suffer or temporarily suffer to slight extent from auditory aphasia, without being able to detect this defect in him. In that case, he may fail to understand the meaning of some word or words used in the questions put to him and may fill up the gap from his imagination. This may cause incorrect narration. A witness may misuse or mispronounce or misplace his words owing to slight undetected temporary fits of motor aphasia. In purely motor aphasia, the words can be understood but the defect is in motor expression of the words.

(2) The witness may fail to hear correctly some word or words used and may use his imagination for filling up the gap. This may cause incorrect narration.

(3) The capacity to cast into linguistic form our experience is not the same in all persons. Men of higher capacities only can give faithful life-like descriptions of experiences. The ability to cast experience into linguistic form may suffer from scanty vocabulary, want of care and caution in expressing in language, imperfect control over language. An experience may be of external Perception or of subjective mental experience. The language of the experience of the objective world of senses is more definite and expressive than the language of the subjective personal experience. In the former case, the meanings of words become precise and definite by reference to the objects themselves also by the persons who use the same language. But only one alone can see his subjective experience; none else can perceive the same; he can only infer; the language of our subjective personal experiences may be very good for personal individual purposes but is inferior to language of the world of sensuous perception in precision definiteness and unambiguous expression. The illiterate and one not accustomed to describe in language his subjective and objective experiences may trip owing to insufficient power to express properly. On the other hand, the literate and the educated may impart to his description language which he found in other writers and which looks fine, though it may



not be the correct language of his personal experience recollected.

(4) The association between word and thought is not a necessary one. The mutual understandings of hearers and speakers in conventional usage associate a thought to a word *i.e.*, give meaning or significance to a word. Conventional usage represents the existing associations between thoughts and words respectively; this usage does not always remain fixed. The full meaning of a word is not always the same in every individual; in the same individual, it may differ on different occasions.

(5) In spite of conscious alertness of the witness, many things he may say as direct expressions from his subconscious mind. Any subconscious bias undetected by him working in the mind of the witness, may cause an incorrect narration undetected by him. Owing to change in attitude, conscious or subconscious, intellectual or emotional, a person's narration of the same incident, on two different occasions may differ without any conscious detection by him.

(6) **Changes in Environment:**—The capacity to narrate properly may fluctuate with changes in the environment. In the quiet chamber of attorney or pleader, a witness may narrate in one way whereas in a crowded court room when many strange eyes are upon the witness and the witness stands in the witness-box, his capacity to narrate may degenerate; in some case, a new environment may produce a stimulating effect.

(7) *The condition of mind of a person who is going to depose for the first time in a court of justice.* Such a witness may become agitated, confused and bewildered. Mr. Richard Harris says:—"His first feeling is that he must not tell it in his own way. He is going to be examined upon it; he is to have it dragged out of him piecemeal, disjointedly by a series of questions—in fact he is to be interrupted at every point in a worse manner than if every body in the room, one after another, had questioned him about what he was going to tell, instead of waiting till he had told it. *It is not unlike a post mortem; only the witness is alive and keenly sensitive to the painful operation.* He knows that every word will be disputed, if not flatly contradicted. He has



never had his veracity questioned, perhaps, but now it is very likely to be suggested that he is committing rank perjury.

This is pretty nearly the state of mind of many a witness when for the first time he enters the box to be examined. In the first place, then, he is in the worst possible frame of mind to be examined—he is agitated, confused and bewildered.

(8) **Bullying a witness:**—In the ends of justice, bullying a witness should be always prevented. Bluster and high tone of rudeness may sometimes be useful in a party's interest but it leads to miscarriage of justice. A witness should be treated with every courtesy, and his self-respect should not be injured. Severity may be sometimes necessary to keep a witness in proper check or to get truth out of him but the severity should not be one mixed with vulgar rudeness. A counsel's or a pleader's angry attitude may influence subconsciously the memory and narration of a timid witness, may create an impulse to please the counsel or pleader; it may equally lead him to truth as well as to untruth. The ordinary tendency of most people is not to displease others. When a pleader or a counsel makes an appearance of great displeasure at the answers of a witness and in an air of great displeasure, puts other questions, there are weak people who may be led to tell lies merely to please the pleader or the counsel.

**Archbishop whateley says:**—"There is another kind of skill, which consists in so alarming, misleading or bewildering an honest witness as to throw discredit on his testimony or prevent the effect of it. On this kind of art, which may be characterized as the most, or one of the most, base and depraved of all possible employments of intellectual power, I shall only make one further observation" No honourable lawyer can have recourse to this base practice, and if any where this be followed, it would be the judge's duty to stop it.

**Archbishop whateley says:**—"Generally speaking, I believe that a quiet, gentle and straightforward though full and careful examination will be the most adapted to elicit truth, and that the manoeuvres and the browbeating which are the most adapted to confuse an honest witness are just what the dishonest one is the best prepared for." But sometimes we come across with wicked perjurers who require severe handling

when severity of tone and manner of the examining counsel may be useful in the interest of justice but it is always desirable that in all that is spoken by a counsel, the polish of courtesy will never be taken off.

**Mr. John C. Reid says** :—"Sometimes a great speech bears down the adversary, and sometimes a searching cross-examination turns a witness inside out and shows him up to be a perjured villain. But ordinarily cases are not won by either speaking or cross-examining. The tyro's conception of the purpose of the latter is that it is to involve every adverse witness in an inconsistency or self-contradiction. But you will often see a dozen consecutive cases tried wherein no witness who is game for the cross-examiner makes his appearance."

**The great English lawyer Mr. Scarlett says in his autobiography** :—"I cross-examined in general very little, and *more with a view to enforce the facts I meant to rely upon than to affect the witness's credit*, for the most part a vain attempt."

(9) *Narrative form of statement by a witness vs. statements by way of answer to interrogatories.* Mr. G. M. Whipple in his *Manual of Mental and Physical Tests* says that "all authorities agree that the use of the interrogatory whether the complete or incomplete form, increases the range and decreases the accuracy of the report. Thus in comparison with the narrative, the range of the interrogatory may be 50 per cent greater while the inaccuracy (of the incomplete interrogatory) may be as much as 550 per cent greater." A witness if asked to tell his whole experience in a narrative form will make more errors of omission but less errors of commission ; whereas a witness examined by interrogatories will make more errors of commission and less errors of omission.

Mr. G. M. Whipple says that "the chief single result of the "Aussage" psychology is that an errorless report is not the rule, but the exception even when the report is made by a competent S (the person who is the subject of the experiment) under favourable conditions. Thus in 240 reports, Miss Borst found only 2 percent errorless narratives and 0.5 percent errorless depositions."

(10) **Leading questions** :—G. M. Whipple in the *Manual of Mental and Physical Tests* says that "the introduction



of leading or suggestive questions very noticeably decreases the accuracy of report for children and unless the conditions of report are quite favourable, even for adults."

Every suggestion made by one mind to another mind is a force and acts itself out unless opposed by some inhibitory force in the subconscious mind or in the conscious mind of the witness. A witness if asked a leading question may simply give the answer suggested, to follow the path of least resistance when his memory fails or when tired confused or embarrassed. A leading question tempts a lazy mind keeping him away from reporting about the true state of his memory.

An answer to a leading question may tend to become an echo to the question rather than genuine recollection. Leading questions strongly suggesting answers put in authoritative tone by a judge or a pleader or a counsel are very dangerous against truth. It is proper, therefore, that leading questions should be avoided as far as practicable in the interest of justice. The unrestricted right of the cross-examiner to put leading questions can't be said to be one promoting discovery of real truth; and psychology condemns the existence of such an unrestricted right.

C. C. Moore says:—"Professor Kuhlmann gives the results of some laboratory experiments by Lipmann, and says they "leave no doubt that memory illusion is greater when the statements made are answers to particular questions than when the statements are made spontaneously on the part of the subject without special questioning."

Professor Claparide says: "In the giving of evidence, suggestion plays a most important part. The simple fact of questioning a witness, of pressing him to answer, enormously increases the risk of errors in his evidence. The form of question also influences the value of the reply that is made to it."

Sometimes it, therefore, becomes necessary in judicial records, to take down the question and also the answer of the witness to it, instead of recording that deposition in the narrative form.

Leading questions sometimes evoke genuine recollection. A witness favourable to a party and ready to perjure for him may get a hint from a leading question asked from the side of



the party to which he belongs, even though the question be disallowed by the court. Such a witness may get a hint from the gesture or demeanour of any person on the side of the party in which he is interested.

(11) Any mental condition disturbing recollection, will disturb narration.

(a) A Rambling mind—the sport of every chance idea that forces up into the consciousness can not recollect properly; he should be controlled and led by proper questions.

(b) In a dull stupid mind, in which the law of similarity does not operate properly, logically relevant memories come slow, disconnected, vague and indefinite. Truth should be elicited from him by proper questions, with patience and unruffled temper.

(c) An over-cautious mind during deposition may always think that lest he commits a mistake; his too much strain and too much attention may disturb proper recollection.

(d) A bold and careless witness may say whatever comes to his lips. If conceited, he may be easily led astray. He may be led to say a false thing if that panders his conceit.

(12) Suggestion is a power. Different forms of questions have different kinds of suggestibility. G. M. Whipple in the *Manual of Mental and Physical Tests* says:—"The form of questioning very materially affects S's deposition, particularly if the questions are of the type known as "leading" or "suggestive" questions. If we follow Stern, at least six types of questions may be framed viz; *determinative, completely disjunctive, incompletely disjunctive, expectative, implicative and consecutive*. A completely disjunctive question is one that forces the reporter to choose between two specified alternatives, e.g., "Is there a dog in the picture?" An incompletely disjunctive question is one that offers the reporter a choice between two alternatives but does not entirely preclude a third possibility e.g., "Is the dog white or black." An expectative question is one that arouses a moderately strong suggestion of the answer, e.g., "was there not a dog in the picture?" (This is the form used by Binet to induce moderate suggestion). An implicative question is one that assumes or at least implies the presence of a feature that was not really present in the experience, e.g., "what color is the cat? *The consecutive*

*question* is any form of question that is used to augment a suggestion that has been developed by previous questions."

(13) Witnesses often give their judgments and inferences and not pure statements of their experiences. Conceit rules many persons who on many occasions believe that they know a thing which they do not know.

(14) Persons whose occupation or profession requires the art of clever talking to capture other minds, get a habit of not speaking unadulterated truth; this habit of mixture of truth and falsehood in their narrations, may not cease to be operative in their testimony in the witness-box.

(15) If the questioner does not put himself in the level of the witness and does not fully realise his capacities and powers and does not fully understand the witness, he may fail to get out of the witness the amount of truth he could have otherwise obtained.

(16) In handling witnesses, it should be remembered that ordinarily each man takes an exaggerated interest in himself; he is often indifferent to other's affairs; that there are many persons who pay small attention to much of their routine affairs.

(17) If a witness deposes in a dull, indifferent sleepy mechanical way, he may fall into error; a judge by showing interest may sympathetically rouse interest in the mind of such witness which may help correct narration.

(18) Parties and witnesses when on the witness-box are sometimes strongly pressed to give reasons for certain courses of conduct. In many cases, the ordinary man may fail to give the correct answer. Dr. Bernard Hart says;—"It will be obvious, therefore, that to ask a man why he does a certain thing is by no means an invariably efficient method of discovering the genuine causes underlying his action. Introspection, however honestly it may be carried out, frequently fails, when it attempts more than the mere recording of the superficial contents of consciousness. So soon as it aims at the elucidation of the real springs of action, there is always the possibility that either no result whatever is obtainable, or one vitiated by the mechanism of rationalisation."

SFC. 5.  
The Moral  
Basis of  
correct  
narration.

§ 5. The moral basis for correct narration by the witness of his recollection is his truthfulness on the occasion. The

judge shall have to determine in each case whether the assertion of the witness agrees with his recollection. This is always an inference, a leap in the dark.

J. Fitz James Stephen says:—"How is it possible to tell how far the powers of observation and memory of a man seen once for a few minutes enable him, and how far the innumerable motives by any one or more of which he may be actuated dispose him, to tell the truth upon the matter on which he testifies? Cross-examination supplies a test to a certain extent, but those who have seen most of its application will be disposed to trust it least as a proof that a man not shaken by it ought to be believed. A cool steady liar who happens not to be open to contradiction will baffle the most skillful cross-examiner in the absence of *accidents, which are not so common in practice as persons who take their notions on the subject from anecdotes or fiction would suppose.*

No rules of evidence which the legislator can enact can perceptibly affect this difficulty. Judges must deal with it as well as they can by the use of their *natural faculties and acquired experience, and the miscarriages of justice to which they will be involved by reason of it must be set down to the imperfection of our means of arriving at truth. The natural and acquired shrewdness and experience* by which an observant man forms an opinion as to whether a witness is or is not lying, is by far the most important of all a judge's qualifications infinitely more important than any acquaintance with law or with rules of evidence."

§ 6. The highest and the noblest emotions of Man are for the True, the Beautiful, and the Good. The selfless divine passion for Truth working in the every day life of worldly action, inspires a man to be absolutely truthful in his speech and conduct. But the number of such highest minds in whom everyday practical life is a ceaseless worship of the true, the beautiful and the good are not large.

SEC. 6.  
Truthfulness

Among large number of men in actual action (whatever their abstract professions may be) the virtue of truthfulness is strongly controlled and limited by the needs and requirements of other impulses; to them, truthfulness is not an end in itself but is a means for realisation of other ideals which they



value ; and the operation of this virtue is thus limited and controlled by the ends or ideals.

(1) Truthfulness is the virtue of a hero. It flourishes where there is absolute fearlessness. In a community or society where every one can speak out his mind frankly without any risk or danger, truthfulness flourishes.

(2) Truthfulness means faithfulness in speech and action. Truthfulness *i. e.*, this faithfulness is a necessary condition of social life ; its range and boundary is, therefore, often limited by the extent of the area to which faithfulness is to be extended. A man with money being pursued by a gang of robbers in a dark night rushes into your house and takes shelter there. Soon after, the gang of robbers come and finding you at the door of your house, ask you about the whereabouts of their victim. Will you tell them the truth or will you mislead them ? The worldly view is that the robbers by their very profession having become enemies of the society, can not get the benefit of the faithfulness to truth on which society is based ; that the proper course would be to mislead the robbers.

In the interest of the very existence of a political community, it often becomes necessary to keep many informations military or otherwise absolutely secret.

An outsider asks an official information on a matter which in the interest of the state should be kept a state-secret. If the official declines to supply the information, the interrogator would be able at once to infer about its nature. Will the official mislead the questioner by a positive lie ? Worldly wisdom says that the interrogator by his very question has become an enemy of the society for the particular occasion only and can not get the benefit of the tie of faithfulness ; that the proper course would be to mislead him by a clever lie. In diplomatic dealings between two different political states, any one of which may prove at any moment an enemy of the other and may endanger its selfexistence, worldly wisdom justifies clever lies if that promote the well-being of the particular State concerned.

(3) Casuistry holds that the necessity for truth varies with circumstances, that there are degrees of truth.

(4) The Romish Church professed to legislate when where and how to speak the truth.

Edward Westermarck says :—"Yet from early times we meet within the Christian Church a much less rigorous doctrine, which soon came to exercise a more powerful influence on the practice and feelings of men than did St. Augustine's uncompromising love of truth. *The theory was laid down that as faith was not to be kept with a tyrant, pirate or robber, who kills the body, it was still less to be kept with an heretic, who kills the soul,*"

(5) In the struggle for existence in animal evolution, mimicry which is a sort of falsehood played a certain part.

(6) Lie has been a factor for self-preservation. Lie has been the weapon of the weak but cunning in their self-preservation and self-advancement in competition with the stronger. The instinct of self-preservation and self-advancement which is very powerful, is always ready to use "lie" for offensive and defensive purpose. There is an impulse in many to conceal truth where they suspect any personal harm from disclosure. "Truthfulness" is sacrificed by many whenever they think rightly or wrongly, that personal interest would be promoted by the "lie." People feel tempted to lie for preservation and promotion of their interest and also to please and not to displease powerful men and men in a position of authority. Servants, subordinates to conceal their irregular and improper conduct often use "lie" as shield and after a few falls, lying may become a second nature, in their dealing with their superiors.

The rural cultivator in this part of the country whom circumstances did not tempt to tell a lie, speaks truth by habit, and when in his first litigation he is advised to tell falsehood, he has to struggle hard in overcoming his habit of truthfulness.

In this part of the country, there is more lying among the lower classes of the towns and of the precincts of towns than among agricultural populations. Many among the agricultural masses here are compelled to depose falsely in the interest of their landlords or mahajans, out of fear ; the record-of rights, if properly maintained would not only be the charter of rights of these agricultural classes but will be one of the greatest moral forces for making the agriculturist speak the truth even when his landlord's interest is jeopardised,

(7) In our every day courtesies, politeness and "gentlemanly" manners, people sometimes suppress their real emotions and thoughts and speak and act in a way as would please others and promote good feeling among all. Here for promotion of mutual love and mutual good-feeling, for mutual happiness, for promotion of social well-being, people simulate and dissimulate; these simulations and dissimulations harm no body and promote social well-being, social happiness; weaken our lower nature and strengthen our higher nature. By always acting the life of a good man, one may become good. It is sometimes said that the language and behaviour of politeness sometimes mean untruthfulness. But as the real nature of mere politeness and courtesy is well-understood, they can't mean untruthfulness, as theatrical acting does not mean untruthfulness. In politeness and courtesy what are vile, mean, wicked are concealed and we dress ourselves in what are good, noble and honourable.

(8) Mr. Hallam in speaking of the degradation of morals in the Middle ages says in a place:—"One crime as more universal and characteristic than others, may be particularly noticed. All writers agree in the prevalence of judicial perjury."

(9) In literary works of imagination—in novels, in poetry, in drama, we create imaginary worlds. Minds having strong creative imagination, can easily change their narrations and make them differ from their recollection. Every recollection tends to express itself in narration agreeing with the recollection. To make a narration disagree with recollection, a power of self-control is necessary as well as a ready capacity to narrate an imaginary story as would suit the individual interest for the time. Individuals not possessing these two powers, may from their very constitution become truthful narrators, **Lie** is the weapon of Satan, of perverted intelligence.

(10) From the operation of the various forces that surround a community or a class or a people or a nation, a habit of truthfulness may develop and then from the effect of habit, there would be found more truthfulness there.

(11) Edward Westarmarck in his origin and growth of Moral Ideas says:—"Various uncivilized races are conspicuous for their great regard for truth; of some savages it is said



that not even the most trying circumstances can induce them to tell a lie. Among others, again, falsehood is found to be a prevailing vice and the successful lie is a matter of popular admiration" Instances of extreme truthfulness are seen in many uncivilized tribes in India.

(12) In the same book, E. Westermarck says:—"The age of chivalry was an age of chicane, and fraud and trickery, which were not least conspicuous among the knightly classes. \* \* \* In modern times, according to Mr. Pike, the public records testify a decrease of deception in England. Commercial honesty has improved, and those mean arts to which, during the reigns of the Tudors, even men in the highest positions frequently had recourse, have now, at any rate, descended to a lower grade of society. *At present in the civilized countries of the West, opinion as to what the duty of sincerity implies varies not only in different individuals, but among different classes or groups of people, as also among different nations.*"

Lecky in his History of European Morals says that Veracity usually increases with civilisation. He says that industrial veracity—the accuracy of statement or fidelity to engagements is the special virtue of an industrial nation. Lecky says in one place:—"We accordingly find that even where the impositions of trade are very numerous the supreme excellence of veracity is cordially admitted in theory, and it is one of the first virtues that every man aspiring to moral excellence endeavours to cultivate. This constitutes probably the chief moral superiority of nations pervaded by a strong industrial spirit over nations like the Italians, the Spaniards or the Irish, among whom that spirit is wanting. The usual characteristic of the latter nations is a certain laxity or instability of character, a proneness to exaggeration, a want of truthfulness in little things, an infidelity to engagements from which an Englishman, educated in the habits of industrial life, readily infers a complete absence of moral principle. But a larger philosophy and a deeper experience dispel his error. He finds that where the industrial spirit has not penetrated truthfulness rarely occupies in the popular mind the same prominent position in the catalogue of virtues. \* \* Trust in Providence, content and resignation in extreme poverty and

suffering, the most genuine amiability and the most sincere readiness to assist their brethern, an adherence to their religious opinions which no persecutions and no bribes can shake, a capacity for heroic, transcendent and prolonged self-sacrifice, may be found in some nations *in men who are habitual liars and habitual cheats.*"

M. D. Chalmers writing in 1895 in the Law quarterly Review says :—"Few people, I think, realize the extent to which perjury is prevalent among the lower classes in England. I happen to have administered justice in three different countries, namely England, Gibraltor and India, so perhaps I have some basis of comparison. \* \* \* In India, no doubt there was a good deal of lying, but many of the lies were of a stereotyped form (like fictitious averments in pleading), and I certainly think that it is harder to get at the truth in an English county court than it was in a northwest cutchery. In the High Court, a higher grade of witness is reached and perjury is comparatively rare."

(13) Perjury is frequent in the law courts here, but my opinion is that the number of persons who hire themselves out for giving false testimony are not many in this part of the country. Fear of the powerful landlord, fear of the powerful mahajan, fear of the dangerous desperate criminal, and fear of the cunning and wicked man who may bring troubles in various ways, create motives for false deposition in many cases. People decline to speak out their knowledge in many cases when by doing so they may bring trouble to them by displeasing some body ; a wrong and foolish idea that for securing justice in a law court, lying is necessary, is another cause of perjury. It is unnecessary to mention in this paragraph all the motives that cause perjury in this part of the country.

Mr. Justice Field in his Introduction to the Law of Evidence says in a place :—"It will then be sufficient to say that while on the one hand it would be a gross slander to predicate of all the natives of India, as of the Cretans, that they are liars, it would on the other hand, be misleading the young judicial functionary to tell him that he may safely look for as much truth in an Indian as in an English witness-box." In my experience in this part of the country though I found frequent cases of

perjury in the witness-box, I found also many honest, conscientious, truthful witnesses.

(14) To judge is an innate impulse of man, He has a tendency to judge and form an opinion in every dispute (of other people) that comes to his experience. To suspend one's opinion in the absence of satisfactory evidence, is the trait of a cultured mind. But ordinary people are very quick in forming opinions; they are very quick judges. There is also an impulse in man to feel for the side on which he thinks justice to be. In every dispute, most of the witnesses form their opinions as judges and come to feel in favour of the party in whose favour his judgment is passed. These witnesses thus come with a bias which subconsciously influence recollection and narration. And a witness who strongly feels for a cause, is easily tempted to make narration deviate from recollection and help the cause, if necessary. There are persons truthful and honest in their every day life and thoroughly disinterested, who would not hesitate to tell lies to supply some technical oral evidence if that be necessary for advancement of what they think to be justice.

Sir J. F. Stephen in "A general view of the Criminal Law of England" says:—"Early in the present century, juries in criminal cases habitually perjured themselves to avoid a capital conviction, by finding goods stolen in a shop to be worth 39s, when they were really notoriously worth much more. From a perjury of this kind the step was short, in some cases it was almost imperceptible, to a perjury committed to save an innocent man or a man supposed by the perjurer to be innocent or to save another from loss of character by making public circumstances which the witness is under the strongest moral obligation to conceal. An infinite weaker temptation would be nearly sure to cause, if it did not altogether excuse, some of the minor reticences or defects in complete candour which would be inconsistent with telling the whole truth and nothing but the truth."

(15) *Freedom from motive to lie, removes moral ground for falsehood.* But in human nature, the causes that may generate a motive to depose against interest of a certain person and in favour of interest of another person, are legion. A witness may be ill disposed against a party because he



resembles his enemy ; or because the party has amassed large wealth by his endeavours while he has not been so successful or because the party did not invite the witness on the occasion of a certain feast ; or because the party always travels in a carriage while he walks on foot ; or because the party did not keep an unreasonable request of the witness on a certain occasion ; or because everyone calls the party to be a good man and the witness is tired of hearing it ; there may be any other of a large number of possible motives for which the witness may be ill-disposed against a party.

Similarly a witness may be well-disposed against a party for any one of a large number of grounds. In Law Courts, the motive or motives which influence a witness to take side of a party, can in many occasions never be found out. An expert who is paid an abnormally high fee for his deposition may feel a tendency to have all his sympathies, prejudices and predilections enlisted in favour of the party who seeks his patronage and pays him for his deposition.

A child's mind is likely to be in more cases free from motives to lie than in the case of a grown up mind. An idiot is more reckless of consequences, and therefore the motive to lie is less likely to occur in a fool than in the case of an intelligent mind. An intoxicated person will freely tell lies when they spring spontaneously and automatically from some emotion ; but if truth springs spontaneously and automatically, he is more likely to speak the truth ; alcohol produces a paralysing effect upon the power of self-control.

Fear of being detected in cross-examination and fear of punishment if perjury be detected may operate as motives for telling truth in the witness box, but they in most cases, prove very weak forces. The judge who can rouse respect and reverence for him in the witness-mind, enjoys a prestige which is a powerful auxiliary for securing truthful narration.

Jealousy is a great foe of truth in depositions of witness. It plays a great part in influencing opinions and in narrations of facts. Aristides was ostrakised because many people were tired of hearing him, called "The Just."

(16) "**Group-feeling**" is a certain emotion arising from common profession or common interest or common circumstances or from any other ground which works as a sort

of unifying factor. A group united by anything in common and possession of a common sentiment, gets a sort of individuality; its result is that every member of the group tends to feel for the other relating the common element and tends to feel one outside the group as a sort of foreigner. Spirit of race, spirit of caste, spirit of tribe, spirit of religion, spirit of a village, spirit of a profession, and similar such common feelings are group feelings. *Espirit de corps* has been called generalised selfishness. The most powerful regulative principle in man, is ordinarily selfishness. *Espirit de corps* is a great enemy of truth in judicial depositions and may even tamper judicial impartiality. A witness tends to feel for a party belonging to the group to which he belongs and against the outsider, though this tendency in many cases may be controlled through operation of other impulse or impulses.

(17) There are many who think that "Litigation" is "war"; that as murders are permissible in war, so lying is permissible in "Litigation." In this part of the country Many such persons would frankly tell the truth outside a court room, and help to arrival of a reasonable and fair compromise but, in case of actual trial before court they would not tell the truth in their depositions in the trial.

(18) Religious piety is no guarantee for a man's truthfulness. He whose God is a God of truthfulness and who sincerely believes that his God will never grant salvation to a liar, unless he repents and ceases lying, will endeavour to be truthful; but he who believes that his God can be won over and salvation can be secured by prayers, devotions, fastings external ceremonials, will not find in his religion any efficacious motive to be truthful.

§ 7. To believe the statements made by others is an impulse of the Human mind. It is a psychological law of the Human mind that every statement made to a Human mind, produces a belief in its truth, unless that natural tendency to believe is counteracted by some other force arising from any other external suggestion or any auto-suggestion coming from within the Human mind. Every oral statement made to a Human mind operates as a suggestion and the force of this suggestion tends to produce a belief. In hypnotic condition, when no counter-suggestion coming from without or from

SEC. 7.  
The impulse  
of the mind  
to believe  
statements  
made by  
others.

within, can oppose, the oral statement carries belief. In normal condition, our previous experience exercises a controlling and selective action. A statement the truth of which is opposed by our previous experience is not believed.

When a man makes a statement showing his belief in the same, through the law of sympathetic response, there is a tendency to produce a belief in the mind of the hearer.

A person gets only a part of his experience through his personal experience; the rest of his knowledge—which is the greater part—comes from statements of other minds whether conveyed directly or through writings. Belief in the veracity of other minds, is the inevitable assumption in the building up of the system of knowledge in an individual mind which can get only a small portion through personal experience.

Every Judge when sitting on the bench, carries with him this strong, natural, spontaneous automatic impulse of the Human mind to belief in Human Testimony. This strong, natural impulse requires to be curbed and controlled in the court room. In the witness-box, persons come to depose in an abnormal condition of war between the rival litigants. The ordinary procedure under the existing English System is the procedure of war. The Judge sits as an umpire. Each party brings his fighting-men—the witnesses. The witness who will not support, is held back. The function of a Judge is not to investigate and secure evidence like the seeker after truth in scientific research. The Judge passes his verdict on the materials produced before him. In India, a Judge may ask any question necessary for finding out truth and may call for witnesses and evidence on his own motion, but this is an auxiliary function. The main form of the litigation is the form of a duel between parties. In this special atmosphere of duel where strength lies not only in truth but in undetected lies, the spontaneous belief in human testimony requires to be partly curbed.

But an attitude of disbelieving all oral testimony is absolutely unjustifiable. Having regard to the nature of human knowledge and human mind, in judicial trials, we can not dispense with oral testimony. It has been said that witnesses may lie but circumstances do not lie. But circumstances unless admitted, shall have largely to be proved by oral evidence.



But psychology demands that that every witness should be tested in the Laboratory about his capacity to depose on a particular fact or facts and that full information should be obtained about his past life for determining his moral and intellectual capacities which may be relevant relating to his particular deposition. How far, the Legislator will be able to provide for these special demands of psychology is a different problem belonging to the science of Legislation.

§ 8. Fortunately for Justice, the number of cool steady liars who can spontaneously move from lie to lie without any emotional manifestation, who can act and behave like truthful and honest witnesses while pouring out falsehood, are not to be met very frequently.

SEC. 8.  
Demeanour  
and behavi-  
our of  
witness in  
the witness-  
box and in  
the court  
room.

Every mental state tends to cause some movement in the body. The number of our emotions is legion. Every emotion has certain physiological external expressions consisting (a) in muscular changes and (b) changes in the circulation of the blood.

Every recollection has a feeling-aspect which is its emotion and this emotion has its expression. Every recollection tends to find expression in speech, in the witness-box. For false narration, inhibitory action is required. Every such inhibitory action has its characteristic emotion which has its characteristic expression. Dissimulation is negative where as simulation is a positive suggestion.

G. L. Duprat is of opinion "*that no intentional derogation from the truth can take place without a tendency to muscular contractions or expansions*" G. L. Duprat says:—As to persons of strong character skillful to the point of dissimulating the very sentiment which they experience in the act itself of dissimulation, it is certainly difficult to discover in them the traces of the lie. On the other hand, children usually betray themselves readily enough. Some children are reported as lying with apparent candour; but these are the scarcely conscious lies, for young beings are rare who dissimulate to the point of giving every appearance of candor. Many are embarrassed; they are uneasy under the inquirer's gaze; their eyes will not meet yours; and they show a haste to escape from further scrutiny, by making involuntary movements to get away or to elude attention or to

take up some new activity. Some, in spite of an apparent coolness, can not avoid contracting the muscles, tapping the sole of the foot in a certain rhythm, crunching something in their fingers or plunging their hands in their pockets and then taking them out in alternate movements. Others show their uneasiness by an excitement, an exaggerated boldness amounting to insolence; in their emotion they go beyond all moderation in the passionate expression of their assertions, in the volubility of their language, in the quickness of their answers or in the audacity of their questions \* \* \* In some children while speech becomes copious, the voice is low, yet with others it is high pitched with outbursts like spasms. The excitement may induce only vaso-motor modifications, blushes or paleness or each alternatively. Sometimes the only perceptible mark is a trembling of the hand, or a winking of the eyes, or a rapid dilation of the nostrils or a slight creasing of the hairy skin, or an odd smile either fugitive or lasting and then almost inscrutable. The protrusion of the lips or their contraction with discoloration of the mucus, sometimes replaces the smile. In some instances, the liar tosses his head, sometimes he watches for some sign of acquiescence; sometimes he fluctuates between boldness and confusion." The expressions noticed by G. L. Duprat in the case of children, may be found among those of the illiterate masses whose intellect has not got much development and who have not become hardened liars. But it should be kept in mind, that none of these manifestations are intrinsic marks of falsehood; that any one or more of these manifestations may accompany the deposition of an honest witness.

In the opinion of Mr. Justice Field there is a remarkable difference between the demeanour of a witness who is describing a scene or occurrence which he actually saw and that of a witness who repeats from memory a story which has been taught him. Mr. Justice Field remarks:—"The former while detailing what his eyes have seen throws an unmistakable vitality in his narrative—his eyes are lit with intelligence, his features are all in motion, his hands make unconscious indications, no part of his body is wholly at rest—and all these combined together produce a series of pantomimic gestures, illustrative and corroborative of the details of his narrative,"

These remarks are certainly true in the case of witnesses of the demonstrative and strong emotional type. But there may be cool apathetic witnesses having memory of visual type who may depose as if they are reading from a book.

As regards the tutored witness, Mr. Justice Field remarks :—"The latter, on the other hand, either stands perfectly motionless or is fidgety and restless ; his features are impassive ; the pupil of the eye is fixed, he gazes at empty space, instead of watching the face of the Judge or of the examining advocate to see if he understood ; he hurries on with his story lest he should lose the thread of it, and is impatient of interruption ; occasionally as he forgets his cue the dry, white tongue is thrust hurriedly out and as hurriedly withdrawn, or the apple in the throat rises and as suddenly falls ; and his whole attitude and demeanour even not fail to remind his hearers of a school boy repeating, in the presence of a stern pedagogue and with the fear of the rod before his eyes, a task which he has learned by rote."

The following from Mr. Taylor's work deserves mention here ; "So, when we find a witness over-values on behalf of his party ; exaggerating circumstances ; answering without waiting to hear the question ; forgetting facts where he would be open to contradiction ; minutely remembering others, which he knows can not be disputed, reluctant in giving adverse testimony ; replying evasively or flippantly ; pretending not to hear the question, for the purpose of gaining time to consider the effect of his answer ; affecting indifference, or often vowing to God and protesting his honesty—we have indications more or less conclusive, of *insincerity and falsehood*. On the other hand, in the testimony of witnesses of truth there is a calmness and simplicity ; a naturalness of manner ; an unaffected readiness and copiousness of details as well in one part of the narrative as another ; and an evident disregard of either the facility or difficulty of vindication or detection."

But a consciousness that by mistake he may say something which leads him to be disbelieved, may create nervousness and overcaution and a morbid tendency to reflect upon the bearing of answers given.

Mr. Justice Field is of opinion that a false tutored Indian witness can be detected by asking interrogatories, instead of



allowing him to narrate his story. "The false witness on the other hand, knows only the story he has been taught, and his perplexity and embarrassment are too obvious to escape notice as he recalls his memory, perhaps in vain, to try and find in what he has learned by rote suitable replies to the questions that are put to him."

In the inference of mental condition of a witness from some outward bodily manifestation, it should be remembered that though in the same group of men, having a long common history, individuals in many cases agree in having a common bodily expression for the same mental state, individuals also differ and have different expressions of the same mental state. This individual language of expression of a mental state can be correctly understood by one who has previous experience of the individual but not by the Judge before whom the individual appears for the first time. Even in the case of the same individual, his habitual mode of expression of a mental state may change.

A liar while controlling his statement, may fail to control the bodily outward expression of the true recollection and may thus get detected. Such was the case of the witness who while saying that he lived peacefully with his neighbour clenched his fist.

Laughter may be used to control scorn, shame, modesty, rage, anger, pain, perplexity. In children, in simple persons like children, in lunatics, the expressions of the emotion appear better, owing to defective inhibition.

Positive strong conviction of a witness often impresses more favourably than a diffident statement; but diffidence may spring from caution and carefulness whereas positive strong conviction may spring from a hasty careless mind. An American writer Mr. Arthur. C. Train says "Just as our position is at a disadvantage in an ale house and your dandy in a mob, so are the hyperconscientious and the oversensitive and refined before a Jury. The most effective witness is he whom the general run of jurors can understand, who speaks their own language feels about the same emotion, and is not so morbidly conscientious about details that in qualifying testimony he finds himself entangled and rendered helpless in their own refinements. A distinguished lawyer testifying in a recent

case was so careful to qualify every statement and refine every bit of his evidence that the jury took the word of a perjured loafer and a street-walker in preference." If any Judge be like one of these Jurymen mentioned by Mr. Arthur C. Train, his decision would be also of the like kind.

A liar may sometimes simulate facial expressions of frankness, smiles and intonations approaching natural, to raise confidence in his speech.

The innocent liar mixes imagination with memory, fails to separate fancy from fact, believes and utters both as true. The careless liar does not take the trouble of seeing that his narration agrees with recollections and allows his narration to be automatically led by his impulses and narrations. The innocent liar and the careless liar, do not show any characteristic demeanour of a deliberate liar who has not learnt to control the emotional manifestations of the struggle to suppress the vocal manifestation of the true recollection.

Observation of a witness after his deposition, may be of help. Mr. A. C. Plowden (in grain or chaff; the autobiography of a Police Magistrate) says :—"And if I am doubtful about a witness speaking the truth, I direct my attention to his mouth and to his hands. The mouth is perhaps the most expressive feature and the hands of a liar are seldom at rest. But where I often think much is to be learned from a witness is after he has given his evidence and left the box. I continue to watch him as he sits unsuspectingly in his place in the Court while other witnesses, especially those that are opposed to him are examined. The expressions that pass over his face on these occasions are often very instructive." (*grain or chaff; the Autobiography of a Police Magistrate*).

Is this demeanour of a witness while not under examination legally admissible evidence under Indian law and English law, and can a Judge under English Law and Indian Law use this evidence without keeping a record and allowing an opportunity to the party adversely affected to explain?

Amos C. Miller says :—"I have also observed that the witness who is swearing to a clear-cut lie will, while so doing throw back his head with an indifferent air and close his eyes or blink. My experience has taught me to believe that that is an almost certain sign of deliberate dishonesty"

A witness may depose as to impress the Judge and the Jury favourably. A deposition agreeably and impressively delivered (apart from its correspondence with reality), by its very manner, may engender a conviction. But if a witness owing to his incapacity to express properly, impresses badly mere fault in expression may prejudice the mind of the Judge and the Jury. A persuasive speech by a counsel is useful to the party. Persuasive delivery by a witness tends to create a subjective conviction. Written Language is a dead thing compared with spoken language; and the mode of delivery of a witness may give such vitality to his words as to carry conviction to the minds of the hearers.

In the course of oral deposition, a modulation of voice, an emphasis, a tone, an expression of face, may attach a meaning to words and phrases, which they would not bear in ordinary writing. When a witness deposes, he is also an actor. His voice, his gesture, his demeanour, sub consciously and automatically work to give a fuller expression to the inner mind. When language falters and mind struggles for a fuller expression, the external motor manifestations through voice gesture and demeanour may convey a bit of the inner spirit.

In the witness-box, when a witness shows a *hesitating mind*, he often rouses suspicion. But this hesitation may arise from two very different causes: (1) A witness may consider the effect of his answer before giving expression to his recollection; this causes hesitation. The witness in this case is more anxious for the effect of his answer upon the fate of the case than for expressing what his recollection is at the moment. (2) But hesitation may arise from a desire to be very accurate; the witness instead of giving language to his recollection as soon as it comes to his mind, may reflect over it and compare it with other recollections to see whether the present recollection is a right one and not an illusion of memory.

SEC 9  
Regulation  
of Narration.

§ 9. Regulation of narration saves time of the Court and diminishes the chance of wrong valuation of evidence. Burdening of narration with irrelevant matter or making the record bulky with matter which is finally found to be valueless, are evils to be guarded against. They may lead to miscarriage of justice.



Securing in cross-examination from witnesses of the opposite party, positive facts which a party wants to use in his favour, may help to shorten hearing of cases, and for this purpose it is desirable that the lawyer should take as full information as is possible of the relevant facts within knowledge of the adversary's witnesses. For regulation of narration, a witness may be asked to make him ready by a previous self-rehearsal relating to answers on the questions that may be put to him.

A witness in examination-in-chief, should be interrupted as little as practicable; the fewer the questions that can be asked the better; the memory of the witness should be allowed to work as smoothly and automatically as far practicable. In the examination-in-chief, a question should be so framed that without being a leading question, it would be a reminder of events rather than a test of the recollections of the witness.

A witness showing nervousness in the witness-box should be encouraged, gently treated and made familiar and as much as possible at home with his position in the witness-box.

During cross-examination, repetition of the same question in case of a perjurer-witness, may be useful, even though once an answer has been obtained.

It is the duty of pleaders and attorneys to learn from witnesses what evidence they can supply to enable them to select who are competent to depose about relevant facts and for securing expedition in the trial of the cases. Courts depend upon the honour of pleaders and attorneys for discharging their part of duty with great caution. Nothing should be done as may lead to false evidence. The strong suggestions by an overmastering personality may render the memory of a witness false, even when the witness is an honest one. This should be guarded against.

Talking among the witnesses over an incident before coming to depose, may lead to revival of lost memory, but it may also cause illusion of memory and may drag the memories of weaker personalities follow the alleged memory of a stronger personality.

Francis L. Wellman says:—"There is a great difference between coaching a witness and preparing him for the witness

stand. If a witness is coached, he is apt to be led to perjury, but if he is merely prepared, then, in my judgment, the cause of truth is advanced. Why should a timid, nervous witness be left to the tender mercies of the opposing lawyer without a word of advice." "There is nothing so annoying as a fool in the witness-box, especially when the examiner knows the man who is making a fool of himself is really telling the literal truth. Why not remind a witness to keep his temper, to speak slowly and distinctly, to be respectful to the Court and the opposing lawyer? Why not caution him not to try to be "smart" or flippant in his replies? Why not caution him that he should carefully understand a question before he attempts to answer it; to try to make his answers short and responsive and not volunteer matters about which he is not questioned?" "Why should not an advocate test his own witness by cross-examination beforehand in his office? It often relieves their minds very much, because they not infrequently are afraid that when they mount the witness stand, their whole past will be raked up by the cross-examiner, and this fear often makes them hesitate to tell all they really know. Such a rehearsal is good for the examining counsel as well. It teaches him how to manage and handle his own witnesses when he reaches the Court-room and if he is careful to confine these rehearsals to the manner only and not the matter of the testimony, he will find them of the greatest service at the trial, both to himself as well as the cause he represents." It becomes difficult to follow evidence when it is incomplete or when not presented in an order of continuity.

SEC. 10.  
Hearing of  
evidence and  
its record  
by the Judge

§ 10. (1) A judge may fail to understand correctly the statement of the witness.

Where a witness gives a full answer in a narrative form his whole statement may be recorded. But ordinarily witnesses give more or less partial answers; and the full reply is to be had by combining the question asked with the answer given. On combination it may be found that a complete unambiguous reply has not been obtained. By another question the ambiguity may be cleared. But in ordinary life, we often complete partial answers, and ambiguous answers by making inferences from the surrounding circumstances. What the witness has not expressly said is filled up by an inference. In every day

life and in unimportant matters, this procedure is useful and desirable. But in the serious question of a deposition in a law court, the witness should be compelled to give an explicit answer and nothing shall appear in the recorded deposition from the inference of the Judge. But the Judge in virtue of his habit in everyday life and in hurry may enter in record as deposition of a witness inference of the Judge and it may be that a wrong inference has been made.

The real soul of a deposition is often given out by the manner of deposition—by modulation of voice, gesture, action; a Judge should follow these to enter into the spirit of the deposition.

A Judge may suffer slightly from temporary fits of sensory auditory aphasia, unknown to him. The result is that sometimes some word may not be understood and the gap may be made up from imagination and subconscious inference.

Appreciation and sympathy are essential for fully catching meanings of a language expressing personal subjective experiences.

Language is a living thing growing out of each man and takes a colouring according to the individuality of each person; the study of a personality throws light on his language; and the study of his language throws light on his personality. There may be conventional usages of small groups within the same community speaking the same language; similarly there may be private usages of individuals. Every individual has a personal language; a knowledge of it or a sympathy and appreciation of the individual personality as revealed by that language, can only help grasping the fuller and completer significance of his words in many matters of life. The witness is a stranger to a Judge. To understand the real mind of the witness, the Judge should possess sufficient power of intellectual insight, and also sufficient imagination and broad sympathy to put himself intellectually in harmony with the witness-mind.

A Judge's attention may fail during hearing of deposition. He may be disturbed by noise, or he may feel sleepy during extreme heat or because he had no sleep on a previous night. Keeping up attention continuously alert and watchful is a difficult task and there may be temporary lapses of attention,



A pleader may ask a question followed by an off-hand answer while the Judge is still engaged in writing deposition given before ; the Judge may hear the whole thing but may by accident miss something. Accidents we can't avoid.

The Judge must understand thoroughly the language of the witness ; if he do not possess thorough knowledge, he may make mistake. Where the Judge does not understand the deposition as given and hears what the interpreter says, there may be mistake in the course of interpretation.

The Judge may record either the substance of the evidence or the evidence in the narrative form or he may take down the question and the answer. In the last form of record, the intervention of the judge's personality is the least ; in the narrative form, the intervention is still greater ; but in the record of evidence in the memorandum form, the intervention of the Judge's mind is at the greatest. In recording the substance of evidence, the Judge records what he thinks to be the substance of the evidence given. The chance of error increases with the degree of intervention of the Judge's personality. When the Judge records the evidence in a language other than in what it is given, there is danger of deviation from the original in the course of the change in the language.

When Judges are sometimes compelled to work in great hurry for a greater outturn of work, mistake in recording evidence may easily take place. Some of these mistakes may not be detected even by the witness in this part of the country when the evidence is read over or interpreted, as many of them attend to what is read over or interpreted in a very careless manner. Hurry does not help retention and a Judge may even sometimes fail to recollect just after the deposition whether the record is what the witness deposed.

SEC II  
Narration  
about Time.

§ 11. A witness in deposing has often to refer to the period which has passed since happening of an incident.

(1) "The longest bit of duration which we can apprehend at once so as to discriminate it from longer and shorter bits of time would seem (from experiments made for another purpose in Wundt's Laboratory) to be about 12 seconds. The shortest interval which we can feel as time at all would seem to be  $\frac{1}{600}$  of a second. That is, Exner recognised two electric

sparks to be successive when the second followed the first at that interval" James.

(2) Space and time, entirely freed from sensible contents, never enter the experience of actual Perception. They are aspects of reality and are obtained by abstraction.

(3) Consciousness of time can not be separated from consciousness of change; both go together.

(4) Time rich in interesting experiences seems short in actual passing but long when looked back in memory. Time very poor in experiences seems long in actual passing but very short when looked back in memory.

(5) "The same space of time seems shorter as we grow older that is, the days, the months, and the years do so; whether the hours do so is doubtful and the minutes and seconds, to all appearance remain about the same." (James)

(6) Time is flying. "The actually present time" is like the rainbow in rain-drops. Events change like rain-drops; the abstracted time aspect remains as "the actual present." Our "*present*" is always ceasing to be; thus our static "actual present" is composed of ideal elements of past and future and the presentative element of present moment. The "static present" is an ideal something, though containing flying "presents" as the dynamic real present is always not the present. Every "static present" has its boundaries determined by the purpose for which the "static present" is required.

(7) Pure empty Time can not be actually Perceived and the differences between greater time and less time can be felt only by reference to sensible contents. It is by individual experiences in individual consciousness that a greater time is felt greater than less time. Time is measured by events in nature. By movements of earth round sun and by movements of moon, time is ordinarily measured. Illiterate people may measure time by rotation of crops, rotation of seasons, family incidents as birth or death, by floods, scarcities, high prices, epidemics. Years, months can be ascertained by calculation and not by any direct perception. A witness should know the particular year of an incident and by calculating only, he can say how many years ago that incident took place. The number of years elapsing between two incidents can be given

by calculation. The witness should actually calculate in the witness-box or should give from memory the result of a calculation. All statements of time on the basis of years, months of the Almanac, are *inferences* and not *direct Perceptions*. The results of previous calculations can be however remembered at once.

(8) Sometimes when a witness has deposed about a certain period, he is asked in cross-examination about periods between other events and attempt is made to prove falsity of the first statement, by showing its inconsistency with the result of calculations made on the basis of the other statements of the witness. It should be seen however in a case like this that a witness does not make a mistake from mere miscalculation or whether the witness is at all competent to speak about any other period or periods asked.

(9) When a witness speaks of a certain period, in cross-examination he may be asked about the nature and particulars of the calculation on which he states the period.

SFC 12.  
Narration  
about space.

§ 12. A witness has often to speak about distances or areas. A witness often answers these things not on his previous actual measurement but on his guess or inference. The guess is based on visual perception of space or distance or on some other principle used for inference. But real space or distance is found out by the principle of superposition and is an object of tactuo-muscular perception. In cross-examination, this capacity of the witness to make a correct inference may be tested. The witness may be asked the distance of some object from the place where he is deposing; the real distance may be found out by measurement and the result may be compared with the statement of the witness. The witness may be asked the area of some piece of land before him, and his statement may be compared with the actual area of the field. The distance given may be on the basis of time taken in walking and the speed of walking.

A person might have gone to a place many times but if he did not direct his attention to the matter of the respective directions (North, South, East, West) of the place, it may be impossible for him to state correctly the directions in the witness-box. By reference to the position of the sun at the time of his visit or sometimes from direction of wind on that



occasion or by reference to the position of the place relating to some site of known directions, or by compass or by reference to position of stars, the directions may be inferred; by reference to some known landmark or some other thing direction may be inferred. The statement of direction is always the result of an *inference*. Discrepancies in the statement of direction in the depositions of witnesses may arise from wrong inferences.

From illusions of perception, wrong statements may be made about extension. The real space is the space of tacto-muscular perception. The visual impression may be misleading. The question is about the width of a way by the side of a very high building; he who states the width on measurement will give the correct extension. But he who will give it by guess from visual impression, may err. The same extension by the side of a high building appears to the eye shorter than the same extension by the side of a low building. The same area when occupied by buildings appears to the eye larger than the same area when unoccupied.

§ 13. There are many witnesses who often do not distinguish between knowledge and belief, in the legal sense of the terms. They would say that they know a thing when they only heard about it but relating to which their belief is unalloyed by least shade of doubt. The legal difference between knowledge and belief rests in the presence of *direct personal experience* in the case of knowledge and in the absence of the same in case of belief. But many witnesses regard all beliefs unalloyed by the least shade of doubt to be knowledge, whatever may be the nature of the experience direct or hearsay. Parties who verify complaints or written statements, and witnesses should be informed about the legal meanings of the terms "knowledge" and "belief."

SEC. 13.  
Statements  
about know-  
ledge and  
belief.

§ 14. It is desirable in the interest of securing freedom from bias, that experts should be examined at instance of the court, his cost being payable by such party whom the court directs. The position of an expert as a disinterested third person examined for finding out truth is one thing; and his position as a party's witness is another thing. Where a court calls an expert, the best expert can be chosen. But where parties call experts, each would call such an one as is ready

SEC. 14.  
Expert  
witnesses.

to support the party who calls him. A court is bound to follow law as it exists; in a legal system, where each party examines an expert to support his case, by selecting any expert who is ready to swear for him, and where evidence of one expert is opposed by the evidence of the rival party's expert, there is difficulty in obtaining better information. A party's expert always feels a subconscious bias towards the party who pays him. Sir J. F. Stephen in his general view of criminal law says:—"No one expects an expert, except in the rarest possible cases, to be quite candid. Most of them—for there are a few exceptions—are all but avowedly advocates and speak for the side which calls them."

SEC. 15.  
The child  
witness.

§ 15. (1) Imagination to a large extent mixes both in child's perception and reproduction, when the child's honest belief is no safeguard for truth of his narration. The greater the capacity of a particular child to free himself from this influence of imagination in his perception and narration, the more valuable would be his evidence.

(2) The *Language* used by a child may not always mean what it means to an adult. The Judge should be always on the guard to determine the correct child's meanings of the expressions used by the child. It is difficult in many cases for an adult to put himself at the point of view of a child.

(3) Spatial perceptions of magnitude, distance, perceptions of velocity, are not the same in children as in grown up people. The horizon of a child is narrower than an adult's horizon.

(4) Facts and events as regards emotional response, in many cases, affect differently adults and children.

(5) There are adult life experiences, of which, a child is ignorant.

(6) A child is strongly subject to the influence of suggestions of his superiors. The whole education of the child to enable him to fit his behaviour with that of the society to which he belongs, is greatly controlled by suggestions emanating from his environment. The extreme suggestibility of the child is necessary for his proper development; an abuse of this child's capacity may be made by false suggestions. A child who has seen only a part of an occurrence, on hearing the conversations of grown up people about other particulars,



may believe that he actually saw all the particulars. A child may be lead by grown up people to believe that he experienced facts which never happened.

(7) G. Stanley Hall writing in 1891 in the American Journal of Psychology says :—" Truth for our friends and lies for our enemies is a practical though not distinctly conscious rule, widely current with children, as with uncivilized and indeed, even with civilized races."

(8) Amos C. Miller, writing in Illinois Law Review says :—" My own belief from personal observation, is that children are very *unreliable witnesses*. They are impressionable, their imaginations are active and their memories are short. They can easily be trained to believe they saw or heard what they did not see or hear. They are very hard to corner. I know of no other way to handle them than by kindness, patience and persistence"

§ 16. Many men and still largely women think in personalities ; their narrations are controlled by their likings and dislikings of persons. The same fault committed by one would be described as heinous while if committed by another would be described as excusable. The judgments based on likings and dislikings of personalities, influence the narratives to make them conform to the respective judgments. A Judge should always try to see whether a witness is thinking in personalities and how far such bias is influencing his narration.

SEC. 16.  
Thinking in  
Personalities.

§ 17. A lie may be oral or written or may be expressed by any other behaviour ; It is any behaviour by which one endeavours, consciously or subconsciously, to introduce into another's mind a belief, positive or negative, not in harmony with what the person behaving believes to be the truth. Association per se can not lead to true knowledge ; only so far the connections established by association follow the real order of things, can it lead to true knowledge.

SEC. 17.  
The Liar's  
imagination  
and its treat-  
ment.

Imagination involves dissociation and association. Imagination is creative, constructive and helpful in the pursuit of truth and in practical life, so far the dissociation and association are controlled by right principles.

Simple negation is easier than deceptive affirmation. The liar's imaginative association is controlled by the impulses



or tendencies which interest the liar. This impulse having a conative and an affective side, works subconsciously and consciously in creating mendacious productions conformable to the interest of the impulse. When the impulse creating the lie can not get itself satisfied from the available order of things and circumstances, without the help of lie, it creates the lie.

Lies, the creation of imagination, are regarded by some people, to be non-moral; that they are good when they promote good, and are evil when they promote evil. But the refined and enlightened conscience of humanity strongly condemns all sorts of lies as immoral. The cure of lie is in cure of the motive to lie.

G. L. Duprat draws the conclusion that the Lie is a phenomenon common to all civilizations, all classes of society, all ages and both sexes. According to him, "it originates spontaneously apart from imitation or faulty education, and merely by the combined operation of imagination and the personal tendencies or aims unsatisfied by the natural course of events. Education, imitation, fashion, manners, morals, all strengthen the mendacious tendency; while weakness, illness, mental and physiological incapacity, lack of the higher sentiments (united sometimes with arrest of intellectual development), degeneracy, all favour the hatching of the lie-tendency; and finally social causes, such as war, persecution, popular emotions, mob frenzy, repression by violence or coercion, combine to make mendacity almost inevitable." According to G. L. Duprat, Lie "is at one and the same time a psycho-physiologic and a psycho sociologic phenomenon" and "*the warfare against the lie is simply a part of the great struggle for the moral life as a whole.*" He says:—In sober fact, the warfare is against rooted human desires or antipathies, often concealed from our view, and no less difficult to overcome than they are to discover. And our means of overcoming is to awaken contrary tendencies not artificial ones but those tendencies and desires which are normally implanted in human nature and go to make up the noblest traits that mark humankind."

Everything that deprives an individual from harmonious adjustment to his social environment, tends to create a tempta-

tion for a lie or lies. The personal conative tendency that is brought to play by this maladjustment, tends to make mind create lie or lies subconsciously or consciously or by both ways. It is by the control of the higher ethical nature, that these tendencies in favour of lie can be partly or fully overcome.

Moreover the process of ordinary reproduction, and the tendency to give language to what floats into consciousness through ordinary reproduction are forces against lie which is the work of creative imagination.

§ 18. Every normal man has a capacity to judge, and to form his own judgment upon every fact is a natural tendency in many men. To report any incident without mixing one's judgment or opinion is difficult with many. A judge should always separate a judgment of witness from his statement of fact. Hans Gross says:—"Every exposition contains without exception, the judgment of its subject-matter, though only perhaps in a few dry words. It may be in some *choice expression*, in the *tone*, in the *gesture*, but it is there, open to careful observation."

SEC. 18.  
Influence of  
Judgment  
on narra tion

A Judgment formed during or after experience of a fact may control narration; but the previous attitude of the mind *i.e.*, pre-adjusted judgment controls the experience itself. Hans Gross says:—"They have seen the event in accordance with their attitude towards life. One has seen nothing; another this; another that; and although the thing might have lasted only very short time, it made such an impression that each has in mind a completely different picture which he now reproduces."

§ 19. (1) Subconscious partisanship may take place from a subconscious tendency to prove worthy of the confidence reposed by the party calling him as a witness.

SEC 19.  
Subconsci-  
ous partisan-  
ship in a  
witness.

(2) A party calling a person as a witness, may rouse a subconscious desire in favour of his victory. Ordinarily, in every contest, most persons have a tendency to take sides. An appeal to a person's statement as witness means a sort of putting oneself under the patronage of the witness. The self feeling of the witness may subconsciously predispose him towards a person who for the time has put himself for the time being as under a sort of his patronage.

(3) Some persons don't like to depose unless for the side which they think to have been wronged. They, thus, go with a bias in favour of the side for whom they depose.

SEC. 20.  
The moral  
control of  
social  
opinion.

§ 20. If perjury is strongly condemned by the society and the perjurer is treated as one who should be a social outcaste, a great force is obtained against perjury. But a person's behaviour is controlled by the opinion of that portion of society whose opinion he values. Find out whose opinion a person values and then you will be able to say how he will behave to the knowledge of such person. Thieves, robbers even often value opinion of certain persons to whose knowledge they would not lie. People are liable to show their weaknesses before those whose opinion they hold of no account. Love evokes love and hatred evokes hatred. A person by following the law of love extends his moral kingdom over those who reciprocate his love; and he who follows the law of hatred loses his moral influence over the objects of his hatred. The law of Love brings prestige while the law of hatred destroys prestige. But if he who follows law of hatred possesses sufficient power to terrorise, he comes to enjoy a prestige of terror. The prestige of Love is superior to the prestige of terror.

SEC. 21.  
Some signs  
of emotions.

§ 21. (1) Shutting of the mouth or energetic bodily motion or both, may be sign of *Resolution*.

(2) In *Astonishment*, the following may be found: The hands are raised in the air or the palm is laid on the mouth; the raising of the eye-brows; people of not too great refinement may beat their foreheads.

(3) In *scorn*, the following may be found; contraction of the nose showing creases; sniffing, spitting, blowing as if to drive something away; folding the arms and raising the shoulders. *Artificial scorn* is in many cases attended by unnecessary smiling; where the smile does not take place, the pose may become theatrical and may betray itself through its exaggeration.

(4) In *Defiance and spite*, the following may be found: closed mouth and the breath several times forced sharply through the nostrils; baring the canine teeth and frown when turning towards the person upon whom the defiance or spite is directed.



(5) In Resignation, there may be folding the hands in one's lap.

(6) The *sparkling of the eyes* arises from a greater secretion of tears ; nervous excitation causes a greater secretion of tears.

(7) The contraction of brow appears in fixing attention ; in search after real memory ; in concoction of a false narration which will appear as true ; in a condition of disgust ; in embarrassment ; in mental condition of disbelief, when smile is added.

## CHAPTER XV.

### PSYCHOLOGY OF JUDGMENT,—JUDICIAL TRUTH, JUDGE'S MIND.

SEC. I.  
The  
standard of  
interpreta-  
tion.

§ 1. A Judge hears evidence but what is the standard by which he judges. It is the same standard by which every person judges or interprets every new experience. A person's "nature and stock of ideas or in other words, his character, habits, memory, education, previous experience, momentary mood" constitute what Mr. Lewis calls his entire 'psychostatical conditions.' Every person has certain habits of thinking and certain habits of acting and certain habits of feeling. These habits expressed in language of reflective thought appear as homage to certain principles; on each occasion, a person tries to fit in a particular case with such a formed habit or form or mould. The process of decision in many cases for accepting a particular thought or action or feeling, often takes the form of a search of a formed habit or form or mould to which the particular case exactly fits. The quest of a right concept is a great thing both in action as well as in reasoning. To make a certain thought acceptable to a person is to convince him that it fits in with a form of thought of his mind.

Perception, classification naming, conception, recognition take place, through and in the light of the mass of ideas or representative elements, present in the mind. This is the process of apperception or assimilation or psychic reaction or interpretation, which takes place through and in the light of the "psychostatical conditions" aforesaid. Visions will differ according to the difference in the colour and nature of the glasses through which you see; similarly mental vision which is understanding the meaning, differs according to the nature of the mental constitution of the individual,

The "psychostatical conditions" are different in different individuals; they differ in different communities, races, tribes or peoples in the different stages of civilisation or in different conditions of life.

But this particular mental constitution of each person having been shaped and formed out by the play of environmental influences upon the innate capacities of the mind, every experience of a novel character tends to influence its constitution. Progress consists in a proper assimilation of the new and in evolving higher and better forms for understanding the old and the new.

The standard is, therefore, not always a fixed standard; it may improve or may degenerate. ✓

Judicial experience may deepen and widen a Judge's vision, if he possesses the capacity to utilise the same for his mental growth. Other conditions being the same, a judge of experience is better than a new judge.

Every mind normally tends to be a system of emotionally-toned ideas-systems or complexes. These complexes are at least partly causes for the direction of our thoughts and action. A Judge's mind contains many complexes such as, political complex, religious complex, ethical complex, social complex, family complex, profession complex and such other complexes. A Judge's judgement is the result of the operation of the evidence before him and only so far appreciated by him in his mind as composed of various complexes. In the evolution of every judgment, emotional elements always intervene. The reasons that are given by a judge in his judgment in many cases are evolved during the process of Rationalisation. The process of Rationalisation may proceed piecemeal from step to step according to the movement of the mind which leads to final conclusion or the final conclusion may appear first and Rationalisation may be completed for satisfaction that the judgment to which the judge is impelled is a rational one.

Dr. Bernard Hart in the psychology of Insanity says:—

"The prevalence of rationalisation is responsible for the erroneous belief that reason, taken in the sense of logical deduction from given premises, plays the dominating role in the formation of human thought and conduct. In most cases, the thought or action makes its appearance without any such



antecedent process, moulded by the various complexes resulting from our instinct and experience. The "reason" is evolved subsequently, to satisfy our craving for rationality."

SEC. 2.  
The method  
of operation  
of past ex-  
perience  
upon present  
experience.

§ 2. The *relational* consciousness by which the meaning, value, bearing of a present experience is understood is by reference to past experience remaining in the implicit subconscious form. The present experience of each individual is thus perceived through the eye of past experience of each individual; and this individual element gives an individualistic personal value to each experience. This past remains as a *distinctless totality* and thus the perception of relation of the present experience to the past, takes the form of an intuition. By reflection, the details of the whole may be unfolded but this capacity may differ in different individuals.

So when reasons or explanations for a certain belief or opinion or a course of conduct are sought, a person may more or less fail to make statement of the same.

SEC. 3.  
Classifica-  
tion of  
persons  
according to  
their ways  
of thinking.

§ 3. (1) *Visual concrete type*:—Some persons have visual pictures more or less complete before their mind, when they think.

(2) *Motor concrete type*:—Images of muscular sensation and other sensations during movement are used in thinking; they may be mixed with visual elements.

(3) *Visual-topographic group of Ribot*:—These use visual images of the printed words in thinking.

(4) *Auditory-motor type of mind*:—These use images of the spoken word in thinking. Individuals may use different sorts of images at different times or even sometimes simultaneously.

*But the image part or whole* is only a symbol in general concepts. The meaning, real *thought*, is in the *fringe*.

§ 4. Every concept is an implicit judgment. Every judgment is an explicit concept.

SEC. 4.  
Relation  
between  
concept and  
Judgment.

§ 5. (1) *Reasonable type*:—In this type all the materials for arriving at a decision having been obtained, the reasons for and against arrange themselves spontaneously into a system, leading spontaneously automatically to a conclusion which as it were naturally necessarily grows out of the premises. It evolves in a mind which can coolly wait so long all the materials are not in. Such a mind possesses a store of stable

SEC. 5.  
Types of  
Decision.

and worthy ends, and a store of stable rational judgments showing the means of realising these worthy ends. Particular cases brought under these stable ends and stable judgments, constitute reasonable decisions.

(2) *Impulsive Type* :—In these decisions, reason having become helpless, the impulse to action closes the decision. When one is tired of waiting, hesitation, indecision, when either course seems good, any suggestion from without or any chance motion from within, as bring relief to the misery of indecision, becomes the occasion for the conclusion of the decision

(3) *Revolutionary Type of decision* :—A decision of this type changes the whole outlook of life. A person climbing a hill sees one sight from a lower height and another from the top of the hill. This type of decision causes a change in outlook like this; it acts as a conversion whether on the intellectual, or ethical or religious or emotional side. This decision requires the strong help of subconscious mind.

(4) *Decisions with effort* :—In this decision, both the alternatives remain clearly present in consciousness; and the conflicting forces tear the mind; but the mind with effort triumphs and in choosing acts like a person deliberately driving a thorn into his own body. In choosing an alternative, the chooser feels the pang of what he is losing. Most of our decisions are without effort. Painful decisions of the present type are not many.

The Judge's decisions may be of any of the types nos 1. 2. and 4.

§ 6. Dr. Carpenter says ;—"For just as—if so rude a comparison be permitted—we try whether a new piece of furniture which is offered us does or does not fit into a certain recess in our apartment and accept or decline it accordingly so we try a new proposition which is offered to our mental acceptance. If it either at once fits in or can by argument or discussion be brought to fit in, to some recess in our fabric of thought, we give our assent to it, by admitting it to its appropriate place. But if it neither fits in the first instance, nor can by any means be brought to fit, the mind automatically rejects it."

SEC 6.  
Extracts  
from Dr.  
Carpenter  
to show how  
a proposi-  
tion is  
accepted.

"And since the *Preformed Mental Habits* thus determine not merely the primary acceptance or rejection of the proposition but the issue of the further attempts to make it fit, *not only will different individuals draw very different conclusions from the same data, but the same ego will form different judgments as to the very same matter at different stages of his mental life*; without any change in the external materials of his judgment, but solely from changes in his own fabric of thought one recess (to revert to our former simile having grown large enough to admit what it formerly refused, and another having contracted so as no longer to give place to what it originally admitted."

"These purely intellectual diversities of judgment are closely related to those modifications in our memory of actual occurrences which are unconsciously produced by our habits of thought in relation to the subject of them. How much our conclusions on any matter into which Emotional considerations enter, are swayed by the state of feeling in which we may be at the time, is a matter of familiar experience; a night's rest often completely reversing our judgment by altering our estimation of the data on which that judgment was based."

"While no one, *constituted as he is at the time* may be able to help giving his assent to certain propositions and refusing his assent to others, everyone who has learned to direct his own intellectual activity is responsible for the use he has made of his power, *in the construction of that mental fabric*, the aptitude or inaptitude of which for the reception of a new proposition determines his acceptance or rejection of it." "A large part of the propositions offered to our acceptance, relate to matters as to which the evidence is far less cogent and conclusive; and the question is not so much whether they do or do not fit at once, as whether they can be brought to fit by argument and discussion. Nowhere again a sincere desire to arrive at truth without the least wish to come to any particular conclusion being presupposed, the balance of judgment will be entirely determined by the individual's previous habits of thought; as on these will depend the relative weight he attaches to the several arguments pro and con. (This is so well understood, at the Bar, that a skilful advocate, in pleading before a Judge, will shape his argument



according to his knowledge of that judge's "turn of mind.") And there are very few persons who are so entirely devoid of *Intellectual prejudices or inclinations to particular modes of thought*, as to be altogether free from their influence; that influence being especially dangerous, *when we are altogether unconscious of its existence*. Those in whom it is chiefly "conspicuous by its absence" are said to be distinguished by their judicial habit of mind.

§ 7. Every emotion other than for truth becomes the interest which chains attention and helps the revival of reasons, arguments which favour the Emotion and tends to inhibit revival of reasons, arguments contrary to its interest. Even when such contrary reasons and arguments are pressed the Emotion tends to minimise the effect of their true cogency. Such a judge if he does not deliver the judgment just after close of arguments, but sometime after, may even forget the reasons and arguments contrary to the emotion.

SEC. 7.  
Any emotion other than a pure desire to find out truth is dangerous in a Judge's mind.

If a Judge tries to arrive at a judgment without hearing pleaders of both sides, any intellectual or emotional bias in him may betray him to error. This bias may operate in his mind to keep off reasons contrary to the bias and concentrate attention on those which are favourable.

Dr. Carpenter says:—"Upon his (*i.e.*, Judge's) candid readiness to listen to all that they can fairly urge, and his trained ability to estimate their arguments at their just weight, will depend the worth of his final decision. This procedure is especially important with Minds which have been habituated to the worship of Idols of any kind whatever; for to these they are perpetually without being aware of it, sacrificing their intellectual and moral independence."

§ 8. Dr. Carpenter says:—"With most persons indeed, the first effect of an assertion which runs counter to their settled beliefs, is to make them think what can be said against it; so that the most candid and truthseeking of men generally require *time* for the digestion and assimilation (so to speak) of any such proposition."

SEC. 8.  
The effect of time for assimilation of a truth contrary to one's accepted beliefs.

§ 9. (1) *The Universal commonsense*. "So may we regard the autocratic deliverances of *the Universal commonsense of mankind* as really having in the 1st instance, the characters of true judgments, each expressing *the general*

SEC. 9.  
Dr Carpenter's view about commonsense.

*resultant of uniform experience* which may be partly that of the individual and partly that of the Race embodied in the constitution of each member of it." Dr. Carpenter.

(2) *The individual commonsense.* "The second or popular acceptation of the term commonsense, on the other hand, is that of an attribute *which judges of things whose selfevidence is not equally apparent to every individual but presents itself to different individuals in very different degrees*, according in part to the original constitution of each and in part to the range of his experience and the degree in which he has profited by it. This is the form of commonsense by which we are mainly guided in the ordinary affairs of life." (Dr. Carpenter.)

Special form  
of common-  
sense.

(3). Dr. Carpenter regards the special forms of commonsense to be "the attribute of such as have applied themselves in a scientific spirit to any particular course of enquiry, things coming to be perfectly "selfevident" to men of such special culture, which ordinary men, or men whose special culture has lain in a different direction, do not apprehend as such."

Constitution  
of common-  
sense.

(4) Dr. Carpenter says that the deliverances of ordinary commonsense "may be regarded as based on the aggregate of our past experiences, which have ranged themselves in the unconscious depths of our intellectual nature by a process of automatic coordination and have become embodied in our cerebral organization."

The value  
of automatic  
guidance of  
common  
sense.

(5) "Experience justifies the conclusion to which science seems to point, that the habitually well-regulated mind forms its surest judgment by trusting to the automatic guidance of its commonsense; just as a rider who has lost his road is more likely to find his way home by dropping the reins on his horse's neck, than by continuing to jirk them to this side or that in the vain search for it. For continued argument and discussion, in which the feelings are excited on one side, provoke an antagonistic feelings on the other; and no true balance can be struck until all these adventitious influences have ceased to operate. When all the considerations which ought to be taken into account have been once brought fully before the mind, it is far better to have them to arrange themselves, by turning the conscious activity of the mind into some other direction, or by giving it a complete repose. If



adequate time be given for this unconscious coordination, which is especially necessary when the feelings have been strongly and deeply moved, we find, when we bring the question again under consideration, that the direction in which the mind gravitates is a safer guide than any judgment formed when we are fresh from its discussion." (Dr. Carpenter)

Dr Carpenter's view about automatic guidance of common-sense, is supported by the following experience which judges sometimes have :—After hearing arguments in a case in which there are many reasons for and against, it sometimes becomes difficult to arrive at a conclusion. But after diversion of the mind or sleeping over the matter, a conclusion flashes into the mind, which in the light of all reasons is found to be satisfactory under the circumstances.

§ 10. Mr. J. S. Mill in a letter addressed to Dr. Carpenter says :—"I have long recognized as a fact that judgments really grounded on a long succession of small experiences mostly forgotten, or perhaps never brought but into very distinct consciousness, often grow into the likeness of intuitive perceptions. I believe this to be the explanation of the intuitive insight thought to be characteristic of women ; and of that which is often found in experienced practical persons who have not attended much to theory nor been often called on to explain the grounds of their judgments. I explain in the same manner whatever truth there is in presentiments. And I should agree with you that a mind which is fitted by constitution and habits to receive truly and retain well the impressions made by its passing experiences will often be safer in relying on its intuitive judgments, representative of the aggregate of its past experience, than on the inferences that can be drawn from such facts or reasonings as can be distinctly called to mind at the moment."

SEC. 10  
J. S. Mill  
on intuitive  
judgments  
in practical  
life.

§ 11. A Judge has to think to find out conclusions on issues, whether an issue be one of fact or an issue of law.

SEC. 11.  
Judge's  
thinking.

So far the issue is one of fact, he has to determine what happened in the past in the objective course of nature (including in nature psychical experiences). As regards such an event in nature he may have (1) oral depositions of witnesses who actually had sensible experience of the event.



(2) or he has to infer about its existence from certain other facts sensibly experienced by witnesses who depose or from facts before the Judge. (Local Investigations, Local Inspection, Things and Documents produced before the court).

How far a witness or witnesses honestly depose or how far their depositions correctly report real incident are based again on inferences.

A Judge has always thus to make in every issue of fact some inferences.

In these inferences, the evidence in the record supplies the minor premises; but the major premises on the basis of which the inferences are drawn, are in the Judge's subconscious, semiconscious, and conscious beliefs and opinions, which form part and parcel of the Judge's mental constitution, the result of innate elements and influence of Environment.

The Judge's affective mental constitution—his likings and aversions, his feelings and impulses—can not fail to exert influence in the formation of his decisions; and so far they interfere improperly they may cause error in decision.

The Judge's (1) intellectual mental constitution (2) affective conative mental constitution where are the springs of all sorts of activity physical and psychical, are thus very vital elements in every decision.

Personal  
Element.  
(1) Intellectual  
mental  
constitution.  
(2) Affective  
conative  
mental  
constitution.

This personal element is one of the causes which leads to difference of finding on the same issue on the same evidence in the hands of different Judges.

This personal element gives different major premises and gives different value to the same major premise.

The minor premise although formally may be the same, may not be in the Judge's mind same.

Although same evidence may be before different judges, they may affect them differently, their attention not being directed to every part of the evidence to the same extent. In every reception of evidence by the Judge's mind, the attention controlled by the subconscious mind of the Judge may not operate in the same way in the case of different Judges or in the case of the same Judge on different occasions. Each party's pleader tries to draw this selective attention in favour of facts and circumstances in his favour. Where each party's

pleader does his duty in this respect fully and satisfactorily, there is a greater chance of reference to all relevant points in the evidence.

If one party's pleader reads the recorded evidence and reports the contents thereof to the Appellate Court Judge, he may err in spite of his honesty. A pleader who has taken up brief for a party and is paid by the party, may be subconsciously influenced in favour of that party and having regard to the nature of ordinary rapid reading, he may fail to see something what is against him. All reading involves the work of imagination and his imagination may work in the interest of his client. Prof. Bergson says :—"When you read a book, when you look through your newspaper, do you suppose all the printed letters really come into your consciousness? In that case the whole day would hardly be long enough for you to read a paper. The truth is that you see in each word and even in each member of a phrase only some letters or even some characteristic marks, just enough to permit you to divine the rest. All of the rest that you think you see, you really give yourself as an hallucination." "It is thus demonstrated that rapid reading is in great part a work of divination, but not of abstract divination. It is an externalization of memories which take advantage, to a certain extent, of the partial realizations that they find here and there in order to completely realise themselves."

But the Judge's attention is controlled subconsciously in case of different judges may not work similarly in hearing arguments of pleaders and this may give rise to difference in effect.

Careful hearing of pleader's arguments is a vital part of judicial procedure and negligence of this duty on a Judge's part may lead to error of judgment.

The interest that different parts of evidence arouse in Judge's mind and thus influences his attention, depends upon the Judge's intellectual nature and affective nature. Thus the personal intellectual and affective conative nature of the Judge has strong influence on the degree of attention to different parts of evidence. The Judge's personal subconscious belief in value of evidence adduced before him, has some influence in controlling his attention.

It should be remembered that interest controls attention. No doubt every conscientious Judge thinks it his duty to attend to every part of evidence adduced before him ; this sense of duty creates an interest to keep up the attention wide awake. But such a sense of duty creates only an intellectual feeble emotion and in spite of the intellectual desire of a conscientious Judge to keep his attention wide awake to every part of evidence, all Judges as constituted in their affective conational side, may not possess equal degree of intellectual emotion to keep the attention wide awake. His uncriticised subconscious beliefs and conscious opinions about importance of different parts of evidence, are ordinarily expected to be a stronger force.

To keep up attention roused up by mere *effort* can not be done for a long time. Prof. James says :—" There is no such thing as voluntary attention sustained for more than a few seconds at a time. What is called sustained voluntary attention is a repetition of successive efforts which bring back the topic to the mind. The topic once brought back, if a congenial one, develops ; and if its development is interesting, it engages the attention passively for a time."

It is the duty of the pleader concerned, to rouse up the interest of the Judge in a part of evidence to which he finds Judge's interest failing, by putting, before the Judge the circumstances which make that evidence interesting to him, when that can be done without any detriment to the interest of Justice.

In considering evidence upon the evidence other than that of his own senses, a Judge always thinks how far they fit in with facts as he is acquainted ; this is what is called probability. This probability is much affected by the personal opinions of the Judge. The general result of the Judge's experience is referred to.

But the personal experience of a Judge can not be always very much. He also carries with him beliefs in certain facts, to which he implicitly renders homage. These beliefs plus his personal experience make up the form to which he tries to fit any new oral evidence adduced before him. A large portion of a Judge's beliefs, is ordinarily uncritically and



mechanically obtained from his social environment, through the operation of the Laws of Like Response and Suggestion.

The Judge's temperament is also of value. He may have too much confidence in his personal experience and beliefs; or he may be somewhat sceptical, attaching not too much value to his own experience and beliefs.

A Judge utilises not only his previous personal knowledge but previous knowledge derived from other credible sources. But this knowledge is a general one and remains partly implicit and partly explicit and is absolutely independent of and separate from knowledge conveyed by evidence before him.

§ 12. A Judge is rightly not allowed to be cross-examined either in England or in British India as regards the major premises aforesaid on which he bases his decisions. But it would be better if each Judge cross-examines himself relating to these major premises. He may then detect in him operation of many uncriticised subconscious general beliefs; it would be proper for him to submit these uncriticised beliefs to the light of his conscious criticism. He may also usefully analyse the workings of his mind to guard against operation of any unfair emotional bias.

SEC. 12.  
Crossexami-  
nation of  
Judge.

§ 13. It is the light for seeing *relations* among subjective and objective facts *i.e.*, the whole range of existing facts. As a mere light, it is speculative reason. When the knowledge of relation obtained is applied for realisation of ends by adopting proper means for the realisation of an end, it is reason applied in practice.

SEC. 13.  
Nature and  
kinds of  
Reason.

When the end is an Ethical or Moral one, Reason becomes Ethical or Moral Reason in showing the respective values of ends or ideals or impulses or of different courses of conduct.

When the end is individual good, it is Prudential Reason in showing how individual good can be best secured.

Both Moral Reason and Prudential Reason may be included in concept of practical reason or this term may be confined to the first.

*The self* energising for knowledge of relations among things phenomenal and noumenal subjective and objective, concrete or abstract, is Speculative Reason or Reason.

The self energising for utilisation of this knowledge by adaptation of proper means to end or ends for their realisation,

is Reason working in practical life; the self as seeing the values of different impulses, ideals, ends, courses of conduct is *Practical Reason*.

A child after its birth gets some knowledge from personal experience but the greater portion of his knowledge (especially his beliefs in general uniformities, laws) is received from the views and beliefs current in the society. Through the law of Similar Responses and suggestion, he accepts uncritically the beliefs and opinions of minds around him speaking through living men around and literature. This mass of uncriticised beliefs forms the greater portion of his knowledge. On the basis of these general beliefs and opinions, he uses the pure deductive laws of thinking—the laws of consistency—the laws of identity, contradiction and excluded middle. These laws of formal thinking or of consistency constitute the *formal reason*. This *formal reason* is largely used on the basis of uncriticised beliefs in general propositions, general concepts obtained mechanically.

*Reason* as an organ of discovery of real objective truth, proceeding on proper lines is more in use in the systematic sciences than in every day affairs of ordinary people. The ordinary man in most cases repeats the current beliefs of his environment, mechanically and automatically, and his play of reason in most cases ordinarily confined to use of the laws of consistent thinking. The very concepts or forms of viewing things he gets from his language and environment.

As every individual has his Body given to him which he can improve by physical culture, so every individual has his body of general beliefs, ideas, opinions given to him, which he can rectify and improve by proper study, investigation and culture according to the proper ways of finding Real Truth *i.e.*, Truth as it actually is (not mere formal Truth.)

The knowledge of general ways in which matter, plants, animals, human beings individually and in groups, behave, *i.e.*, the general laws or uniformities which prevail in these departments of nature, so far not innate come to us from beliefs around us uncritically but these beliefs are verified and tested in the light of personal experience and personal investigation by persons more or less and in the light of that personal experience may undergo modification or rejection.



Our faith in the uniformity of nature is the foundation of all our calculations about future for the purposes of our life and of all our calculations as to what happened in the past.

In judging of Human Conduct, we can foresee the future and tell about past so far this conduct follows certain uniform ways *i.e.*, submits to the control of laws

Uniformities may be of co-existence or sequences. The Universe we know is dynamic; it is one in motion for ever. So far it submits to fixed ways of behaviour, it can be seen back and seen forward by human intelligence.

It is quite thinkable that nature may cease to behave uniformly but the belief in uniformity of nature is felt and acted upon as an *instinct* by all classes of men in the every day transactions of life. *Its basis is now in the affective and conative side of our nature.* The systematised experiences of the different sciences and ordinary experiences of everyday life only supply verification of this instinctive impulse to believe. When ordinary illiterate people believe in strange things contrary to course of nature, they believe them as brought about by intervention of a cause.

The function of science is to find out the *true uniformities* which are for all time *i.e.*, independent of time, *i.e.* uniformities which may be taken as existing by eliminating time and therefore uniformities for all time. Apparent uniformities are chance coincidences *i.e.*, uniformities for limited periods of time.

Mill's canons of Induction are only some tests justified by experience for finding out the aforesaid true uniformities from apparent uniformities. Time is an abstraction, an aspect of Absolute Reality. The *true uniformities* are independent of time and are, therefore, for all time, and therefore reveal real aspects of the Absolute Reality; they, therefore, are true laws of nature. In a true law of nature (whether of co-existence or sequence), time is an accident. In a false uniformity which is a case of coincidence, time is essential.

In inferring about the past existence of (1) a particular incident of non-human nature (2) a particular incident of human phenomena, the great multiplicity of causes, produces difficulty. This difficulty ordinarily is not so great in the case of non-human nature as in Human phenomena. "Human



conduct" is the realm of law. Every individual has so many impulses and emotions and as no two individuals are found identical in every respect respecting their mental constitution, inference of an individual's conduct on a particular occasion, on the basis of laws that regulate human conduct can only be probable.

SEC. 14.  
The nature  
of Judicial  
truth.

§ 14. (A) Both scientific truth and Judicial truth are objective. It should be ascertained what was the exact fact in objective Nature (Nature including all animals including men). Science is concerned with discovery of general laws or uniformities prevailing in nature whereas a Judge is concerned with what *particular event* happened. A Judge has to determine about particular individual facts which are materials of *sensible* experience of individuals.

Scientific  
and Judicial  
discovery.  
Materials  
in Scientific  
Discovery  
and in Judi-  
cial Dis-  
covery.

(B). All possible materials of practical value in arriving at a decision should be collected and carefully attended to. In scientific research we can afford to do that and to suspend a decision till all the materials are obtained. But in Judicial Decision (1) all the materials may not be available before the Judge (2) the Judge can't wait but must decide in some way, except in cases where an accused is merely discharged without recording of any judgment of conviction or acquittal.

In physical enquires we can secure full and satisfactory materials by observation and experiment and by suspending decision till all the materials are obtained. In physical investigation the observers are often trained; ordinarily they are free from passions or any bias; the observation is done deliberately with attention.

In Judicial trials, the observers (the witnesses) are not often trained; the observation may often be a chance one in which the witness might not have felt any interest; the witnesses in a judicial trial are often victims of interest, bias and passion.

A Judge has no right to look to all evidence which he thinks relevant. The extent of his vision is limited and defined by law.

The fundamental Rules of English Law of evidence are :—

- (1) Evidence must be confined to the matters in issue.
- (2) Hearsay evidence is not to be admitted.

(3) In all cases, the best evidence must be given.

The term "Evidence" is used in three different senses : — ✓

(1) Testimony on which a given fact is believed.

(2) The facts so believed.

(3) The arguments founded on them.

The law of evidence lays down how the parties are to convince the Judge of the existence of that state of facts which according to the substantive law would prove the existence of the right or liability which they plead as existing.

Evidence is given on (1) Facts in issue (2) Relevant facts.

Evidence is not required of facts of which the court will take Judicial notice. Evidence is composed of, (1) actual words uttered in court or signs made in court as language, *i.e.*, actual language of whatever nature used in presence of Judge by witnesses.

(2) Documents produced before Judge. Documents and material things and the locality should be identified either on admission of parties or proof by oral evidence before the court can take notice. A Judge can not use any relevant fact of his personal private experience, coming otherwise than in the course of actual public trial of the case.

A Judge can rely not only on legally admissible evidence but also can inspect material things produced for inspection and can see the locality of a property of suit or of a crime.

(C) In science *general laws* are to be discovered and proved. In Judicial Investigation, for finding what happened particular facts are to be discovered and in judicial trial—particular facts are to be proved. In scientific discovery the discoverer relies upon his experience and experience of others. In Judicial discovery, the Judge can't use his private knowledge about particular fact; He has to utilise (1) words of witnesses who actually perceived (2) words of witnesses who perceived other facts from which the existence of fact in issue or of the relevant fact may be inferred.

SEC. 14(C).  
Proof in  
science and  
in Judicial  
Enquiry.

The rules determining credibility of witnesses are rules of experience from observation.

The rules on which all inferences are made, are also rules of experience.

The proper method of correctly getting these rules is the method by which laws as well as probable propositions

are established in scientific Research. But in the absence of establishment of such rules by proper systematic scientific research, each Judge acts upon rules which he personally accepts on the basis of authoritative Judicial statements current popular beliefs, his uncritical beliefs and opinions subconscious and conscious.

In Judicial trial, we can not get the certainty of physical laws; the highest good result that can be obtained is only a high degree of probability.

The passage from the evidence adduced before the Judge to inference of decisions about particular facts is with the help of general rules of conduct of men and of nonhuman nature, but the plurality of causes relating to happening of particular incident in nature and particular act of Human conduct, makes theoretic certainty impossible; the general rules of human conduct are approximate generalisations.

Physical nature behaves in the same way everywhere. But Human nature is not the same everywhere. There are individual differences, class differences, race differences, national differences, differences arising from differences in physical, social, educational, professional, political, religious environments. A Judge judges of human nature by reference to his own nature and on his belief on reports of other people and from his objective observations. But a Judge can have personal objective observations only of the social environment in which he moves. He may be misinformed by reports of other people about Human nature of other social environments, where he does not live, move and act. There is a certain amount of concealment in all social intercourses. A person can freely observe human nature in its naked unconcealed condition only in a very limited sphere.

SEC. 15.  
Prejudice

§ 15. Dr. Abercrombie says :—" Prejudice consists in the formation of opinions before the subject has been really examined. By means of this, the attention is misdirected and the judgment biassed, in a manner of which the individual is often in a great measure unconscious. The highest degree of it is exemplified in that condition of the mind in which a man first forms an opinion, which interest or inclination may have suggested; then proceeds to collect arguments in support of it; and concludes by reasoning himself into the belief of what



he wishes to be true. It is thus that the judgment is apt to be misled by a greater or less degree, by party spirit and personal attachments or antipathies; and it is clear that all such influence is directly opposed to its sound and healthy exercise." "The same observations apply to passion or the influence exerted by the moral feelings."

§ 16. The judgments of the normal man are in many cases the results of the "complexes" operating in his mind. Some one or more of these complexes, may exert an influence, of which the agent is unaware; he may ascribe his behaviour to a cause which is not the real one. A "complex" failing to find direct satisfaction may seek indirect satisfaction and may cause error in judicial decision. A Judge might have become highly offended at the behaviour of his wife but his resentment having become suppressed, during the course of the same day, may find expression in an improper conviction of a person tried in his court.

SEC. 16.  
Perversion  
of Judge's  
mind from  
undetected  
subconscious  
impulse.

Dr. Bernard Hart says:—"one of my patients became involved without apparent reason in a lawsuit which an acquaintance was bringing against his wife. He plunged into the case with extraordinary zeal, entirely neglected his own business, supplied his acquaintance with considerable funds, and did everything that was possible to further the latter's victory. When I enquired the reason of his behaviour, he assured me that he was actuated solely by friendship and by a love of abstract justice. \* \* Investigation showed that the alleged friendship was only of a few weeks' standing, and that abstract justice was very obviously on the opposite side. The real cause of my patient's action was found by psychological analysis to be that he was himself engaged in a bitter dispute with his own wife. He had therefore, unconsciously identified himself with the other man, who happened to be in a similar situation." This sort of indirect operation of an impulse or impulses sometimes instinctively disposes different persons to take different sides of a dispute; this sort of indirect and stealthy operation of an impulse or impulses may produce a bias in a Judge's mind leading to failure of justice. The views of different members of a legislative body may be directed in this way sometimes.

SEC. 17.  
The Logic  
of Action in  
administra-  
tion of Law.

§ 17. In the administration of law, the object is action and not finding of speculative truth. Act we must and every prudent individual acts on a degree of probability which is called moral certainty or certainty for practical purpose. A Judge has also to deal with this sort of certainty.

But a prudent man for action accepts different degrees of probability according to the more or less serious nature of the end and consequence. A Judge is compelled also to do the same. In a criminal case, the guilt should be proved beyond all reasonable doubt, whereas in a civil case ordinarily the decision is on the side which has greater probability. The result thus controls the amount and nature of evidence necessary to prove a case. This logic is logic of action or dynamical logic as opposed to logic of pure speculative purpose or statical Logic. A civil suit of value of five shillings may involve issues involved in another civil suit of value of five millions of pounds; but the same amount of evidence is not adduced in both such cases and the same amount of time in hearing is not given to each of both such cases.

Summary procedures have been provided by Indian Law for petty criminal offences and petty civil cases. There can be no doubt that a summary procedure is inferior to regular ordinary procedure for arriving at a correct decision; that a summary hearing can not yield the same degree of probability in favour of a correct decision than a regular ordinary procedure. Here in the light of end and consequences, a less degree of probability is preferred in actual life though a higher degree of probability could have been secured.

The Logic of action is the Logic used in the administration of law. Several generations may work for finding out a scientific general truth. Every civil dispute or every crime, for securing a decision in a law court, encroaches upon the time of the witnesses, the Bench, the Bar and other persons. A decision should be arrived at with reasonable promptitude and quickness with as little inconvenience and expenditure as far practicable. In adjusting the respective claims of the different factors concerned, law has always to refer to the values of the different factors. In the administration of law, the principle of finding theoretical perfect truth is controlled by the principle of valuation. Law's policy is sometimes the



Logic of action. In the Indian Law, in civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from facts otherwise relevant; and in criminal proceedings the fact that the accused person has a bad character is irrelevant unless evidence has been given that he has a good character in which case it becomes relevant, and except in cases in which bad character of any person is itself a fact in issue. A person condemning these limitations as a psychologist may or may not condemn them as a practical Jurist.

§ 18. This is an inference which involves inferences about (1) capacity of the witness to *perceive, retain, recollect, report* the fact correctly.

SEC. 18.  
The Judge's inference from assertion of fact by a witness to actual existence of the fact.

(2) Honesty of the witness in the performance of these acts.

A Judge should make himself acquainted with psychology of the witness-mind relating to these points.

How can a Judge guard himself from a cool steady liar who can not be broken in any way in cross-examination?

J. F. Stephen says:—"The *natural and acquired shrewdness and experience* by which an observant man forms an opinion as to whether a witness is or is not lying, is by far the most important of all a Judge's qualifications, infinitely more important than any acquaintance with law or with rules of evidence."

"No rules of evidence which the legislator can enact can perceptibly affect this difficulty. Judges must deal with it as well as they can by the use of their natural faculties and acquired experience and *the miscarriages of justice in which they will be involved by reason of it must be set down to the imperfection of our means of arriving at truth.*"

As regards "the natural and acquired shrewdness and experience" aforesaid, J. F. Stephen says:—

"This pre-eminently important power for a Judge is not to be learnt out of books. In so far as *it can be acquired at all*, it is to be acquired only by experience, for the acquisition of which the position of a judge is by no means peculiarly favourable. People come before him with their cases ready prepared and give the evidence which they have determined



to give. Unless he knows them *in their unrestrained and familiar moments* he will have great difficulty in finding any good reason for believing one man rather than another."

Independent of experience, no Judge can develop an intuitive power of judging a witness as true or false. He must have experience of witnesses as they are in unrestrained and familiar moments and also experience of examination of a very large number of witnesses. These experiences with close observation of demeanour and behaviour of witnesses in many cases and an innate sensuous susceptibility to feel consciously or subconsciously nice differences in voluntary and nonvoluntary muscular movements and changes in the blood circulation of the witness tend to develop a sort of intuitive power; but these intuitions may mislead in many cases.

In many cases, a Judge's intuitive power to detect truth or falsity of a witness is nothing but a trap to betray him and make him over to his blind likings and dislikings of men from their appearance and general manner. The witness in his appearance and manner may resemble somebody relating to whom for some reason the Judge has pleasurable memory or may resemble somebody for whom for some reason the Judge has unpleasant memory. Without his being distinctly conscious of those past memories, they may surge up in the Judge's consciousness and may produce to him likings and dislikings. These blind likings and dislikings may make a Judge favourable or unfavourable to the deposition of a witness. The aforesaid "intuitive power" may thus be a dangerous and false guide, and when Judge is sub-consciously or consciously biassed against a view, may cause in him an illusory belief that he intuitively feels the evidence against his bias to be false.

The aforesaid "intuitions" being the result of experience are false guides when applied to persons who may behave differently in their external manifestations from those persons among whom the Judge's experience was confined.

J. F. Stephen says:—"Upon the whole, it must be admitted that little that is really serviceable can be said upon the inference from an assertion to the truth of the matter asserted. The observations of which the matter admits are

either generalities too vague to be of much practical use, or they are so narrow and special that they can be learnt only by personal observation and practical experience. Such observations are seldom, if ever, thrown by those who make them into the form of express propositions. Indeed, for obvious reasons, it would be impossible to do so.

The most acute observer would never be able to catalogue the *tones of voice*, the *passing shades of expression* or the *unconscious gestures* which he had learnt to associate with falsehood; and if he did, his observations would probably be of little use to others. Every one must learn matters of this sort for himself and though no sort of knowledge is so important to a Judge, no rules can be laid down for its acquisition."

In a Judicial hearing the Judge. (1) hears (2) sees.

He hears about assertions of existence of facts.

(a) From these assertions in deposition he has to infer existence of facts asserted.

(b) From the facts the existence of which are deposed to and believed by him, he infers existence of other facts relating to existence of which there is no assertion.

The inferences are based on the basis of various relations which one fact bears to other facts in the objective order of the phenomenal universe. The whole phenomenal universe forms a system in which all the facts are related to one another by certain relationships which are links or chains binding them together in one whole. Through these links or chains, from one fact, another fact is inferred. Every decision on a question of fact is only finding of such an *objective link*. When the link was seen during actual sensuous perception by persons they depose as witnesses giving direct evidence. When that objective link is inferred on the basis of other links the evidence is called circumstantial evidence.

§ 19. (1) In its widest sense, it is the feeling of agreement of our thought (perception, imagination, conception, Judgment) to reality. It is a state of the mind of the subject.

SEC. 19.  
Belief.

Belief is the result of subjective factor of nature of reaction of the individual mind and the objective factors of objective experience which operated from birth till time of belief relating to the matter of belief.

The subjective condition of belief is no guarantee of the truth of the belief. To every individual, his beliefs make up his world of reality and he can no more escape his beliefs so long they are beliefs than he can avoid his own shadow. The beliefs of a person are given to him; he can not control the presence or absence of belief as much as he can not leap his own shadow. Every proposition if it stands in the human mind entirely dissociated necessarily carries belief in its truth and reality. Every belief is the resultant of the various mental facts which exert their influence *i.e.*, remain associated on the occasion of the formation of the belief. Every belief, is conditioned, by the materials operating on the occasion of the formation of the belief. A Judge's conviction and finding are relative things; they are conditioned by the information and circumstances present to the Judge's mind when the finding is made. A Judge's decision may change in the light of fresh evidence. The judge wants material truth and not mere formal truth but the Judge's truth is always a relative one.

Every individual has his system of beliefs conscious sub-conscious as regards the universe, and they are his beliefs as he believes them to be the objective real truths.

In our perceptions, the belief of objective reality inheres as an inseparable element; in all our inferences to material truth, the basis of belief being in their fitting in with the form or shape of our previous experience, the truth is apperceived through past experience. In formal truth, the correctness of inference depends upon conforming to the laws of identity, excluded middle and contradiction.

Success is an index of true belief in life of action; for success is more likely to follow when all the facts concerned are properly valued and when the probabilities are also properly valued.

SEC 20.  
Doubt.

§ 20. Doubt is a state of the mind of the subject when any one of different courses is possible as the correct and real state of things. The mind is in a fix as to the road it would take which would show objective reality. There may be various degrees of doubt. The doubt is not in the objective order of things but in the mind of the thinking subject.

Reasonable Doubt in a Judicial decision is based on the following :—(1) objective materials deposed to (2) probability



of the depositions being correct (3) nature of conformity or disagreement of objective facts deposed to with past experience personal and of others (4) the consequences of a particular decision (5) the probability of happening of these consequences.

Reasonable doubt is a question of practical expediency. A "reasonable doubt" is the result of intellectual emotional and conative factors from the stand point of the objective common intellectual emotional, conative ideals of the society.

Every affirmative positive judgment based on probability involves some doubt. Reasonable doubt is more than mere doubt. In every decision in which an accused is held guilty after trial, a theoretical abstract element of doubt in favour of innocence of the accused remains. But when the degree of doubt is so high as would not justify a conviction having regard to the relative consequences of the conviction and non-conviction and the nature of evidence, the doubt is said to be "reasonable doubt." The standard of "reasonable doubt" is taken to be a social objective standard and not a mere subjective personal feeling, although "reasonable doubt" is a state of individual consciousness only. The test of "reasonable doubt" in individual consciousness is to ask oneself whether he as a reasonable man would *act* on this doubt. The standard becomes social objective so far as the persons feeling the standard have a community of disposition. But in actual working, it also manifests as a form of individual personal consciousness. "Reasonable doubt" involves psychologically a positive affirmation, *a state of positive belief justifying action.*

§ 21 Psychologically disbelief is a sort of belief and both belong to the same class of consciousness. *Doubt* means neither belief nor disbelief. (1) When a fact supported by evidence is opposed by an approximate generalisation, the case is one of comparison of probabilities. (2) When a fact is opposed by a completed generalisation or a real law of nature the fact is impossible and is to be disbelieved totally. (3) Mr. J. S. Mill says:—"Many events are altogether improbable to us before they have happened or before we are informed of their happening, which are not in the least incredible when we are informed of them, because not contrary

SEC. 21.  
Disbelief.

to any even approximate induction \* \* \* The improbability then, or in other words, the unusualness, of any fact is no reason for disbelieving it, if the nature of the case renders it certain that either that or something equally improbable, that is equally unusual, did happen."

We adjust our practical relations to the world of matter and minds around us, on the basis of our real beliefs. Real beliefs appertaining to spheres where our conative affective and intellectual dispositions are in harmony lead our actions to conform to them whereas pretended beliefs or illusory beliefs are of a different character. The motor machinery follows our real beliefs like reflex actions in these cases. Real beliefs in these cases thus get a sort of motor reflexes; when not obstructed by a stronger force they become the springs of conative impulses. The circumstances which favour or disfavour securing a motor reflex, tend to influence the psychical condition of beliefs required for practical life. Our conative, intellectual and affectative tendencies enter to influence the formation of beliefs of practical life. The influence of our practical needs and requirements is so great in the formation of our beliefs that it secures for our beliefs *pragmatical truth* in many cases whether speculative real objective truth may be secured or not.

The excess of vital energy which creates an active temperament may generate a hopeful and believing disposition in the world of action, diffidence in the sphere of action may sometimes spring from an absence of active energetic temperament. If we are following a course of conduct by habit or through some impulses, this circumstance tends to help belief in favour of such facts as enable carrying on the course of conduct.

Desire tends to divert attention in favour of grounds which support a belief which supports the desire and against contrary grounds.

Feeling controls revival of facts and course of attention. It supports a belief favouring the feeling by causing revival of favourable reasons and confining attention to them and by ruling out counter-reasons. Feeling tends to cause revival of only so much experience as favours it.

§ 22. Minds of small experience or in whom their full experience operates only partially, can believe quickly and may become officers of quick conviction, because small experience of past life or imperfect revival of past experience secures their minds against counter-suggestions. A large and extensive experience or a fuller revival of past experience gives rise to many counter-suggestions and thus makes a person cautious; he requires better evidence to bar out with reasonable certainty other alternatives.

SEC. 22.  
Belief in  
minds of  
small experi-  
ence or under  
partial oper-  
ation of full  
experience.

In a person of short experience, or of weak revival there is not much room for doubt and hesitation. Feeble associations in the absence of counter associations may generate beliefs whereas very strong and frequent associations in the presence of counter associations may not generate belief. Examples, Illustrations, parables may be the veritable pitfalls to Judges and Juries alike. Among ordinary persons, there are many who feel convinced, if they understand well a metaphor, an apt illustration or an example. Parables, examples and illustrations go deep into many minds and work as the convincing arguments.

§ 23. There are Judges in whose cases, the first impression lingers with some tenacity. The natural effect of every statement is to produce a tendency to believe in the statement. Wider experience of life enables all right-thinking people to exercise the necessary intellectual control and to suspend belief where proper. Nevertheless the tendency to believe created in the Judge's mind by statement or evidence of the party or arguments of the party who may enjoy precedence in this matter, may in some cases in the Judge's mind get a certain sort of strength only on account of precedence.

SEC. 23.  
Impression  
first and last.

Again, there are Judges in whom the last words produce stronger effect. Such idiosyncracies ought to be strongly controlled by Judges who have such malformed minds; otherwise a Judge's such mental idiosyncrasy may sometimes mean failure of Justice.

What touches the emotional nature of the Judge and fits in with the emotional frame of his mind, pleases him and tends to create a belief in its favour at first hand by a sort of sub-conscious reflex response. The Judge's selfcontrol consists in not giving himself up to this first impulse but to examine



the whole evidence and to sacrifice his favourite first impression if on examination of evidence in the light of his reason, his favourite first impression of feeling can not stand.

SEC. 24.  
Quick deci-  
sion.

§ 24. Quick decision of a Judge may arise from disparate grounds. (1) It may result from his narrow experience or weak recollection and assimilation of past experience to the present one and incapacity to judge properly. His mind may belong to the type of the ill-disciplined minds of members of street-mobs who from certain sign or signs may draw long chain of unwarranted inferences. A shallow quick Judge may have a very short list of "complexes" which control him powerfully and one of these "complexes" quickly catch a particular case before the Judge, leading to the stereo-typed judgment of the particular complex; every case before such a Judge is not judged anew but disposed of according to a prejudgment by putting a case in a certain category. (2) Quick decision may also result from a real intuitive quickness of intellect which in the midst of a large mass of materials can at once see as it were in a flash the bearing of different parts of evidence to one another their interrelations and their relation to the issue to be decided. A Judge of ready and quick decision thus may come from one of two opposite poles.

SEC. 25.  
Knowledge,  
necessary,  
certain and  
probable.

§ 25. In Mathematical Reasonings, the elements are statual and fixed. Hence through the laws of consistency (Identity, Excluded Middle, of Contradiction) we can get necessary truth.

But in inferences of the real moving world, the elements are Dynamic in continuous change. The Laws which rule this Dynamic world of Being, appears not as necessary. Belief in Reign of Law in the universe of change is to us nothing more than a faith and a trust, though there may be instinct in favour of such faith and though the reign of law is essential for thought and action of minds like our own.

When we get an objective law of moving objective universe, we call our knowledge certain.

But in most occasions of our judgments, we do not get all the materials necessary for arriving at certain knowledge.

**Probability** is a particular way of believing on the basis of the nature of objective facts before us.

§ 26. A Judge can properly grasp the workings of minds (intellectual, emotional and conative) of persons who mix with him or mixed with him freely without any reserve; in that case he would be in a position to find out the correct inner experiences corresponding to external manifestations. In every large community, there are several classes of people, each of which remains separated from the other to some extent more or less.

SEC. 26.  
Justice in large political states composed of heterogeneous populations and centralised administration.

A Judge is more liable to err in reading other minds when he exercises jurisdiction over a very large area composed of heterogeneous populations; but his position is morally better than local judges who administer justice among a small number of his own class.

A Judge can have ordinarily personal free intercourse only with a limited circle.

A large political state may contain persons of divergent religions, sects, races, languages, customs, manners, ways of thinking, feeling and acting.

Centralisation secures greater impartiality, freedom from local bias and interest. The large political states are necessary historical stages for evolution of one state for the whole Human Race; they are necessary steps for the evolution of the Highest Perfection and well-being of the whole Human Race.

Judges of wide experience and information, broadest sympathy and vigorous well-regulated imagination, extremely cautious and conscientious are necessary in the centralised administration of justice and in large states composed of heterogeneous elements in the population; wherever practicable Judges should be helped by juries or assessors drawn from that part of the population to which the particular case under trial belongs.

Difficulty arises when the two conflicting parties belong to different classes or religions or sects or races and the case involves some subject of dispute in which the communities to which the rival litigants belong feel differently like the litigants themselves. Under such circumstances, there may be cases in which however careful and considerate the decision may be, one community may feel that justice has not been done.



27  
Some points  
about work-  
ing of  
Judge's  
mind.  
Freedom  
from Bias  
and disin-  
terestedness.

§ 27. Freedom from Bias and Disinterestedness every Judicial system, tries to secure so far practicable. (1) The subconscious personal bias of a Judge can never be expunged.

Every probability in the Judge's mind is an expectation and a personal expectation. Every valuation of consequence in the judge's mind is influenced by his personal conative-affective nature. The Judge's personal elements in the evolution of a judgment can not be expunged. This personal element is the personal bias of the Judge. The intellectual affective, conative, strictly personal elements of the Judge can never be entirely eliminated. In spite of his best conscious endeavour, they will subconsciously influence his judgments.

(2) The objective social ideals of justice, equity and good conscience, and the objective social ideals of prudence and of reasonable inferences in practical life, have always a dim hazy margin, in which individuals differ and in which the same individual may take divergent views on divergent occasions.

(3) Language of statutes, and reported authoritative cases, may give rise to divergent interpretation owing to personal idiosyncracies of Judges. All the general terms are never defined; and definitions involve also use of general terms. In the use of general terms in every language, there is often a margin in the general thought corresponding to general term, where the meanings are not clear. In many cases the different persons may differ and the same person himself may take different views on different occasions in the application of many general terms in concrete particular instances. Every general term in a language gets emotional, conative and intellectual associations in each individual mind according to the nature of the experience of the individual including the meaning of the general terms as he learns from others or from dictionary or from practical use in everyday life. A person learns the meanings of the general terms of his mother-tongue ordinarily used in every day life from practical use in every day life. According to the nature of his practical experiences, the emotional, conative and intellectual associations gather round such general terms. In learning of languages other than his mother-tongue he catches meanings from words spoken to him when he was taught by others or from language



used in dictionary or from the nature of his studies in that language or from a combination of one or more of these processes.

The personal emotional, conative and intellectual elements in the words used in a language cause sometimes misunderstandings even when persons use their mother-tongue. This defect may become greater when one uses language other than his mother-tongue. No codification will do away with the judge-made law of rulings; the judge-made law of rulings may require other rulings for rendering definite the meanings of terms used. A codified law will use general terms; a ruling has to use general terms. A living protoplasm always changes the external boundaries of its form; similarly many general terms behave like protoplasms and show living motions in their uses; they show a boundary a shifting and a changing one in application to different particular cases in the case of different persons or the same person on different occasions.

(4) A judge is a member of a society and is subjected to the various forces which operate within the society. He possesses an animal body which has all the appetites desires which animals possess and is subject to the ordinary motives which operate on every ordinary member of the community.

(a) If a Judge be made entirely without control, he may be tempted to indulge in vices of such a position without control. If you control him, his judicial judgments will be subject to the influence of the controlling authority and the nature of the control.

(b) If you do not control the amount of out-turn of his work, he may be tempted not to exert himself to the full extent of his ability. But if you control his out-turn, he may be tempted to sacrifice the cause of justice for the sake of out-turn.

(c) If you keep him under the Executive department of a state for his promotion and transfer and other personal conveniences, in a case in which the Executive department is interested, he may be consciously or subconsciously tempted not to displease the executive department, though at cost of justice,

(d) If you keep him under the Executive Department of a state for an opinion as to his merits, he may be consciously or subconsciously tempted to accept any view of the officers in power in the Executive Department or accepted official view of the Executive Department, though it may not agree with his view or of others outside the Executive Department.

(e) If the Judge be made subordinate to the Representative Parliament, he may be consciously or subconsciously tempted not to displease that body even at cost of the interest of justice.

(f) The Press is now a great power and it requires a bold Judge who can do his duty faithfully at the risk of an attack from the Press.

(g) Many may say that they are not influenced by flattery but such cases are rare where a person can not be influenced by skilful indirect flattery. It is normal human nature to feel well-disposed towards persons who can worship by skilful flattery. Praise and blame of other persons strongly influence human conduct. The counsels have their interest; the attorneys have their interest; the pleader's clerks have their interest; the landlords have their interest the Press has its interest. Each class of government servants have their interests, Judges as a class have their interest. As every individual has his interest, so every class having some sort of individuality in the community of circumstances for its worldly success, has interests. A Judge must require strong courage who can trample upon the interest of a powerful class of men for the sake of Justice in any particular case. And it requires a very bold Judge who can secure Justice by displeasing the public Press.

(h) Judges are human beings and have the ordinary weaknesses of human beings. If you free them from all control, they will tend to deteriorate. If you control them they will tend to sacrifice justice for keeping the controlling authority in good humour. When the worldly prospects of subordinate Judicial officers are made to depend greatly upon their immediate superior officers, any zeal of any superior officer for out-turn of work at cost of justice will tend to demoralise officers subordinate to him. Officers subordinate to such an officer of strong executive temperament tend to lose

sense of personal responsibility and to do not what they think to be justice but what would please most their immediate superior. Such a demoralising tendency when operative is resisted by many subordinate judicial officers at personal risk, but it is desirable that every reasonable effort should be made to prevent the existence of such a demoralising force. Strong enthusiasm for Justice and constant endeavour to secure it on the part of superior authorities and controlling officers, form the strongest bulwark against a subordinate judge's personal bias for his own official existence and advancement.

The problem for each conscientious judge is how in the face of the tendencies which may lead astray from Justice, he can keep himself wide awake and detect and control any of these tendencies when it endeavours to lead astray from the path of justice.

A Judge should, therefore, cultivate (a) a habit of keeping himself wide awake to detect the enemies to justice (b) and a habit of exercising necessary control whenever any tendency tries to lead him astray from Justice.

(i) Superior personal general knowledge of facts of a part of society or of a department of nature can not be called bias; and ignorance can not be called freedom from bias. But where mere prejudice and baseless false beliefs are cherished under the illusion of superior personal general knowledge of facts of a part of society or of a department of nature, there we have certainly bias of a dangerous nature. If a person who worked in the Police Department for many years, be appointed a Judge, he will be a better judge of cases similar to those which came to his knowledge in the course of his duties as a police officer provided he had the capacity to judge properly the nature and value of his experience; but if his mental powers were of a lower type and if he acquired only a bundle of prejudices, he will certainly be a bad judge. Similarly a Revenue officer of experience when appointed a judge will do better justice or worse justice according to the way his experience operated on his mind.

§ 28. Psychological study is desirable for the proper training of a Judge. A Judge should study about constitution and evolution of the Human Mind, about the Human mind as it works in abnormal conditions and also about the various

SEC. 28.  
Psychological Study.



divergent types of Human mind as they actually grow under different circumstances.

The results of his theoretical study he should always compare with his every day experience; and on the basis of his Psychological learning, he should try to utilise his every day experience of Human nature to draw proper lessons from them for his use.

With these equipments, if he possesses a warm sympathetic Imagination he will be better able to judge about the conduct of others and the workings of their mind with nearer approach to truth than otherwise. Inference into minds of others in practical judicial life must be based upon experience and should be controlled by experience.

SEC. 29.  
Cause.

§ 29. The term "cause" is used in various senses :—

(1) The efficient cause is will or force, producing some effect. This concept has its origin in the man's experience of himself as agent in the sense of effort and in exertion; in resistance of human will by external nature, the idea dawns, the human will being taken as an efficient cause and the opposing thing in nature as another efficient cause.

(2) The material of which a thing is made of is said as its material cause; earth is the material cause of an earthen vessel.

(3) Teleological cause: the end or purpose controlling an operation is said to be the teleological cause of it. The teleological cause of a table is the purpose for which it is manufactured. In plants and animals, the teleological cause is inherent in the individual as the type or ideal to which each individual tends to conform.

(4) Formal cause: The form of the tea-pot is the formal cause of the tea-pot; the form of a table is the formal cause of the table.

(5) The invariable and unconditional antecedent of an event, on happening of which, the event happens is said to be the cause of the event.

(6) The sum of all the condition upon happening of which an event happens, is said to be the cause of the event.

(7) The whole phenomenal universe is a system of objective relations, all things and happenings being related to

one another in certain ways being tied together by certain chains or ties of relation. These general ways are the various laws which rule this universe. Any relationship between things and happenings of this universe, belonging to the aforesaid system of objective relations may be called a "causal relation". The causal relation represents an objective chain or tie belonging to the very nature of the universe.

(8) The term "cause" may be used in the sense of "explanation" or "reason." Any reason or explanation which satisfies a person for a certain judgment or a certain conduct is sometimes called the *cause* of the judgment or the *cause* of the conduct.

§ 30. Certain knowledge gives the knowledge of the real world of things and happenings and their relations. The world is a system of relations. The relations are either mechanical or vital. Certain knowledge consists in the discovery of the net work of objective nexus or chain, of the universe and by deductively inferring on the basis of those objective laws, whether mechanical or vital, that rule the universe. There is no such thing as accident in the universe. The whole phenomenal universe is a system of laws—mechanical and teleological.

SEC. 30.  
Knowledge,  
certain and  
probable.

The real laws of nature, whether mechanical or teleological require to be found out. It is necessary to distinguish these real laws (real causation) from illusions of laws (which are mere uniformities) which are not real laws. How can these illusions of laws be avoided? Coincidences which seem like laws are sometimes wrongly believed as objective laws; when it is found out that a particular uniformity of happenings has no objective real nexus to bind them, but appears from operation of different causes, the coincidences are said to be those due to chance or accident. "Chance or" accident is a subjective human concept.

The Rules of elimination for distinguishing an illusion of a real objective tie (causation) from real objective causation, are the canons of induction and the rules for elimination of chance. These canons of induction and rules for elimination of chance are principles deductively obtained from the general Principle that the whole universe is linked together by fixed real objective ties or chains of relations (which are real laws of nature or laws



of nature or laws of causation). Through a knowledge of these chains or ties and arguing deductively on the basis of these chains and ties, certain knowledge is obtained.

But in the complex affairs of human conduct, our judgments relating to individual cases as come before a Judge, can never be certain; it is always probable knowledge. A probable judgment is a subjective judgment depending upon the degree of expectation for happening of an occurrence. Mr. J. S. Mill says:—"We must remember that the probability of an event is not a quality of the event itself but a mere name for the degree of ground which we or some one else, have for expecting it. The probability of an event to one person is a different thing from the probability of the same event to another or to the same person after he has acquired additional evidence. Every event is in itself certain, not probable; if we know all we should either know positively that it will happen or positively it will not. But its probability to us means the degree of expectation of its occurrence, which we are warranted in entertaining by our present evidence."

Probability based on knowledge of causes is a better guide than one based merely on knowledge of mere uniformities in the happenings of effects. As these uniformities in the happenings of effects spring from operation of causes, any inference based on these uniformities, shall remain confined only where the causes are known to be operating. When we have only knowledge of uniformities of effects, we know nothing of their causes, the inference should be kept confined only to the definite circumstances and conditions under which these uniformities of effects arise.

The presumptions of fact about human behaviour on which a Judge acts are mere approximate generalisations. Mr. J. S. Mill says:—"All propositions which can be framed respecting the actions of human beings as ordinarily classified or as classified according to any kind of outward indications, are merely approximate. We can only say, most persons of a particular age, profession, country, or rank have such and such qualities; or, most persons when placed in certain circumstances act in such and such a way. We could replace the approximate generalisations by propositions universally true; but these would hardly ever be capable of being applied to



practice. We should be sure of our majors but we should not be able to get minors to fit ; we are forced, therefore, to draw our conclusions from coarser and more fallible indications."

Two or more approximate generalisations or probabilities may independently of one another, support a conclusion ; then the total value of probability is increased. When two or more approximate generalisations are necessary to support a conclusion, but all the generalisations depend upon one another to reach the conclusion, the total value of probability is diminished.

The approximate generalisations or the probabilities which a Judge uses in his decisions of fact in a particular individual case, are not usually such as can be measured by application of mathematics. The experience on which a Judge's approximate generalisations are grounded are usually, such as had not been subjected to accurate numerical estimation or such in which accurate numerical estimation is neither convenient nor practicable.

These approximate generalisations or probabilities, thus usually appear in the Judge's mind as so many indefinite expectations, the values of which though capable of comparison as amongst them, can not be usually rendered quantitatively precise. The very psychological nature of these indefinite expectations make them extremely susceptible to the influence of feelings and impulses, and affective dispositions like those of a sceptic or over-confident.

§ 31. Use of Legal fiction by Judges : Law is a matter of real moving life. Theoretical perfection and theoretical abstract reasons must give way if *Law is to be actually obeyed and respected by the masses*. The dynamic elements for obedience to law are in conative and affective side of Human Nature. The Judge and the Legislator can not ignore this aspect of life or the current beliefs and sentiments of the people. Hence sometimes new thought is to be given out in old dress. These gave rise to legal fictions. But it is desirable that the old dress of concealment should be given up as soon as the masses are advanced enough to accept the new advance of thought in its naked reality.

SEC. 31.  
Use of Legal  
fiction by  
Judges

## CHAPTER XVI.

### PSYCHOLOGY OF CRIMES.

SEC. I.  
What is  
crime?

§ 1. "Crime" is essentially a legal concept. Crime is the creation of law and can exist, in its strict legal sense, only in a Political Society. It exists because the Sovereign or the representative of the Sovereign makes or declares a law by which a crime is created or during the trial of a case, declares with retrospective effect a certain conduct to be a crime. A Crime is any act treated by the Sovereign as crime and punished by the Sovereign under the Criminal Procedure. For determining what are the "crimes" in a political community, the legal history of the community should be referred to find out what acts have been treated as "crimes" by the Sovereign portion of the community.

For existence of legal crime, the following conditions are required;—

(1) The existence of a political society, of which, the ruling portion is called the Sovereign, and those that are ruled are called the subjects. The Sovereign power may remain partly in secular hands and partly in priests or clergymen or may be entirely secular or priestly. Secular power in the last resort stands on military strength; the priests or clergymen derive powers through their control of other minds in virtue of the beliefs or disposition to obey of those minds which make them obey the religious leaders (priests or clergymen); in this way the church can control the holders of secular power. The secular power by the nature of its rule and by controlling education and all the sources which operate in the evolution of beliefs and dispositions to obey, may develop more or less in the subjects a mental condition in which obedience is rendered without any reference direct or indirect to the military strength of the secular power. The priests may wield both secular and religious power.

(2) The existence of general rules issued by the ruling portion for regulating the conduct of the members of the political society, by which some acts are made or declared to be crimes ; or the existence of some machinery (being the sovereign or some agent of the Sovereign) which declares with retrospective effect during trial a certain act to be a crime ; or existence of both.

(3) The ruling portion shall possess capacity to get the rules and the judicial decisions obeyed to an extent requisite in a -society. The aggregate of powers possessed by the ruler or the rulers of a political society, constitute Sovereignty. Crime is the creation of the sovereign in a political society whether by declaration or making of law before the commission of the crime or by declaration of law after the commission of the crime.

In the ancient world, acts of murder, rape, violence, plunder by conquering individuals against the conquered, were not crimes in the legal sense, unless treated as crimes by the sovereign of the conquerors.

Sir William Markby in his "Elements of Law," says :—  
 "To exact for all injuries both to person and property a payment in money to the person injured appears to have been *the first form of legal liability* for injuries to private persons alike in Greece, in Rome, and among the Teutonic tribes. The first idea of criminal law, as distinguished from this, seems to have grown out of the *punishment by the sovereign authority of offences directly against itself*. And the impulse to the more general development of criminal liability in later times, seems to have been due, in this country, to an extension of this last notion."

Extract from  
 Sir William  
 Markby.

Under the French Law, the civil injuries are those which are dealt with by the code civil ; and offences are those which are dealt with by the code penal.

Crimes in  
 French law.

Mr. J. D. Mayne in his criminal Law of India says :—  
 "Hence, the broad distinction is established, that in the case of crimes, it is the duty of the state to undertake the prosecution of the offender, and to sentence him on conviction in a way that may operate *as a punishment to him* and as a warning to others. In the case of civil injuries, the dispute may safely be left in the hands of the parties affected by it

Extract from  
 Mr. J. D.  
 Mayne.



and the object of the ultimate decision is *not punishment* but compensation and redress. \* \* \* Formerly and with some few exceptions, chiefly for the protection of the revenue, it (criminal law) dealt only with acts wrong in themselves and to the knowledge of everybody. At present, criminal law may be said to *embrace every act, the doing of or abstaining from which the state chooses to enforce by the methods and penalties of criminal procedure.*"

Extract from  
Sir James  
Fitz  
James  
Stephen.

Sir. J. F. Stephen in the general view of the criminal law of England, says :—

A crime in any moderately civilized state of society is an event recognised as one which is to be if possible prevented and at all events punished by the public force upon public grounds ; but in the earlist period of English history crimes seem to have been regarded as private wrongs, *revenged rather than punished* by those who were injured by them, first by private war, afterwards by summary execution and then by a public administration of justice slowly organized in such a way as to bear many traces of the rough system, if so it can be called, which it gradually superseded."

Crimes may be divided into two classes ; (1) Political crimes (2) non-political crimes. Acts or omissions punished by the state for the self preservation or progress or self interest of the state, may be called *political crimes*. All other acts or omissions punished by the state may be called *non-political crimes*. The political crimes are the most heinous crimes from the state's standpoint. Self preservation is the first duty of a state ; suppression of political crimes is its most important function. The scope and extent of crimes, extend as the state utilises its machinery for punishing political crimes, (1) for punishing wrongs which are revenged by persons injured or by their friends or relations or sympathisers ; and (2) for enforcing all such courses of conduct which it deems necessary to be enforced for good of the society. (*i.e.*, for public good). These two classes fall under the category of non-political crimes.

Evolution  
of the con-  
cepts of  
"offences"  
in English  
common  
law.

The common law offences of England were not defined. To get meanings of offences such as treason, murder, burglary, larceny or rape, it was necessary to refer to the explanations of text writers and the decisions of judges.

There is a view of the nature of crime other than the strictly legal view, which sometimes prevails in the non-legal popular mind. According to this view, a crime is any anti-social act against an individual or individuals of the society.

The sovereignty rests on military strength on prestige *i.e.*, the dominating influence on the minds of the subjects. When the sovereign (*i.e.*, the sovereign portion of the society) makes itself a pure organ for promoting the highest social well-being and shapes all the criminal laws of the state for promotion of the highest well-being of the society and for no other purpose, in the light of the best available information and the highest ethical ideals, through the agency of the best informed men of deepest and widest intellectual and moral vision and of highest purity of character and special capacity for the purposes for which they are engaged, we get then the ideal criminal laws, in which the ideal of non-criminal conduct has entirely coalesced with the ideal of ethical conduct.

The human society is called an organism, but it should be remembered that this language only uses an illustration borrowed from biology. The highest social good is always identical with the highest individual good in its highest and noblest ethical sense; the highest social good shall promote the highest development of the Human Personality. True socialism is identical with true Individualism. In the deepest and widest evolution of the individual souls, the soul of society (which is the organic life of the society) finds its highest and best realisation.

§ 2. According to Lombroso, the *born criminal* is a separate and distinct genus of the human species, an anthropological type. Such a criminal is to be found out from certain physical and moral traits not all displayed by the same individual but generally appearing in conjunction and thus constituting the type. The traits are the following :—

SEC 2.  
Lombroso's  
views on  
"The criminal," as an  
anthropological  
type.

Various brain and cerebral anomalies; receding foreheads; massive jaws; prognathous chins; skulls without symmetry; ears long large and projecting; noses rectilinear; wrinkles strongly marked even in the young and in both sexes; hair abundant and thick on the head, scanty on the cheeks and chin, eyes feline, fixed, cold, glassy, ferocious; bad repellant faces; great width of the extended arms; extraordinary ape-like



agility ; left-handedness as well as ambi-dexterity ; obtuse sense of smell, taste and sometimes of hearing ; eye sight superior to that of normal people ; moral insensibility ; a general freedom from remorse ; want of proper precaution before and after an offence ; variety in infamous achievements.

As regards the expression "criminal type", Havelock Ellis says :—" That we can not use the term 'type' in this connection with the same precision that we use it in racial anthropology is now generally accepted."

To Lombroso, the criminal is anatomically and physiologically, an organic anomaly ; at the beginning, he overestimated the atavistic element in the criminal ; subsequently he pressed the epileptic affinities of crime.

SEC. 3.  
Garofalo's  
view.

§ 3. "From the anthropologic point of view, \* \* \* the type is very far from being fixed and it is doubtful whether further observations will succeed in establishing it. The only thing which has been clearly ascertained is that there exist certain *physiognomic characteristics* or rather physiognomic expressions, which enable the observer readily to distinguish one group from another, to distinguish murderers from thieves, and from both of these the violent or impulsive criminal. In my own opinion \* \* \* the criminal in a non-barbarous society, is an abnormal being, since he differs from the majority of his contemporaries and fellow citizens by the want of certain sentiments and certain repugnances, this want being associated with a peculiar temperament or a deficiency in moral energy." The crimes of the criminal whom Garofalo calls an abnormal being, are what Garofalo calls "natural crimes" *i.e.*, "such acts as offend the sentiment of humanity or violate the rules of conduct exacted by the common or average probity of present day civilised peoples."

SEC. 4.  
Some views  
about "The  
criminal"

§ 4. (1) Despine considered the criminal as *morally mad*. He showed the unforeseeing imprudence, the entire lack of moral sensibility and of remorse of the instinctive criminal. Despine's view may be classified under the *pathological view of crime* which regards crime as a disease like epilepsy, and the criminal as a degenerate.

(2) *The theory of atavism* regards the born criminal as a relapse, a return to the primitive man. This theory assumes that the primitive man was violent and unsociable,



(3) *The theory of Infantilism* treats the criminal as a case of arrested development. It assumes that the criminality which is permanent in the criminal, is normal though transient in the child.

(4) *The sociological view* regards the social environment as the most powerful condition of crimes. According to this view, every society has got the criminals which it deserves, the criminal is a microbe inseparable from his environment. According to Prof. Ferri, the most skilfully constructed codes of criminal law, will not be able to diminish materially the volume of crime but that an amelioration of the adverse individual and social conditions of the community as a whole, from which crimes spring, is necessary.

(5) According to Tarde, the criminal type is a professional type. Tarde in his Penal Philosophy says :—"If the group of malefactors, which is as variegated as it is numerous, as changing as it is persistent, is not united by a single bond that is truly vital; if there exist between them neither that pathological relationship which a similar form of degeneracy or mental alienation would establish, a same group of maladies with which they would be affected, nor that physiological relationship which their common resemblance to supposed ancestors would bear witness to, *of what nature, then, is the bond which brings them together and often gives them a special physiognomy more easily perceived than formulated?* In our opinion, *it is a bond which is entirely social*, the intimate relation which is to be observed between people carrying on the same trade or trades of a similar character; and this hypothesis is sufficient to account for even the anatomical peculiarities especially the physiological and psychological peculiarities by which the delinquents are distinguished \* \* \* of all careers the career of a criminal is indeed the one that is least often entered into by a person having freedom to choose, and is the one where, as a consequence of rapid extinction of vicious families, the hereditary transmission of aptitudes has less time to be carried out. One has been thrust into it from birth; this is the ordinary case. The majority of murderers and notorious thieves began as children who had been abandoned \* \* \* without any natural predisposition on their part, their fate is often

decided by the influence of their comrades. However, there are others whom the fatal logic of their vices has driven to the dilemma of crime or death. \* \* \* advancement in the trade of murder or theft ordinarily assumes a true vocation, more or less vaguely recognised by an experienced eye \* \* \* the special "scent" which sometimes makes one discern among honest people the man who is dangerous and capable of anything is much less guided by a vague feeling of a certain anatomical description that applies especially to vagabonds than by that of a physiological description. It is not the eye, it is the look ; it is not the mouth it is the smile, it is not the features, it is the physiognomy ; it is not the figure, it is the carriage, that enlightens the diviner without his knowing it, \* \* \* there is nothing that is so quickly modified in us by the influence of education and the circumstances of life as the mobile expression of the visage and the body—that which is called 'the air and the manner'. \* \* \* There is not one of even the most precocious of the young monsters of seventeen or eighteen years whose exploits appal the press who has not behind him years of criminal apprenticeship during his entire vagabond and soiled childhood. For the trade of crime, like every other, has its special school. And like every other trade, it has its special idiom, namely slang. \* \* \* There are special associations, temporary or permanent, epidemic or endemic \* \* \* if the petty criminal industry which languishes in the depths of our towns, like so many little shops where a backward manufacture survives, does nothing but harm, the great criminal industry has had its days of great and fearful utility in the past, under its military and despotic form ; and under its financial form, people pretend that it renders appreciable services. \* \* \* And must we not unfortunately, recognize the fact that from the out and out criminal to the most honest merchant we pass through a series of transitions, that every tradesman who cheats his clients is a thief, that every grocer who adulterates his wine is a poisoner and that as a general thing everyman who misrepresents his merchandise is a forger ?"

(6) *Our view* ;—The criminal is one who fails to adjust his behaviour to the ideal of non-criminal conduct imposed by the sovereign portion of the political society to which he belongs. The crime is a case of non-adjustment. The



individual may be abnormal, whether due to arrest in growth or disease in growth or reversion to some savage type or by birth. The abnormality of the individual from whatever cause may lead to crime. The individual may be normal but there may be elements in the ideal of non-criminal conduct imposed in advance of his ideals or against the ethical ideal of the normal subject or against the ideal of reasonable conduct of the normal subject or not justifiable according to the individual reason and conscience of some normal subject. The normal individual under the impulsion of normal motives may commit crimes even when the ideal of non-criminal conduct is in harmony with the individual's ethical ideal and not in any way in advance of his ideals. The crime is the result of non-adjustment of the individual behaviour to the ideal of non-criminal conduct imposed by the sovereign of the political society to which the individual belongs, and the causes of the crimes are the causes of this non-adjustment. The criminal may be a normal man or an abnormal man. Crimes which are against and fall below the current average moral ideas (as actually ordinarily followed and not as mere ideals) of the community to which the criminal belongs by birth, tradition and education and indicating an abiding defect in the conative-affective or intellectual constitution of the mind, and not mere differences of the fringe-zone of behaviour where all sorts of individual differences may take place among normal persons — such crimes indicate an anomalous degenerate mental constitution of the criminal—a mental constitution which is lower than the evolving normal type. The disturbing element which disturbs the growth and formation of the body according to the normal type, may affect the growth and formation of the nervous system and the constitution of the mind.

§ 5. The psychologist will classify crimes and criminals on the basis of the mental causes from which crimes spring. All crimes are the deeds of Human Minds and have their immediate causes in the Human Mind. Every crime is the result of joint operation of the criminal's mind and the environment physical, or social, or both; either the environment or the mind may be the predominant factor in the causation or both may be equally involved; but directly all crimes spring from the Human Mind. The cure of crimes may be effected

SEC. 5.  
Classifica-  
tion of  
crimes and  
criminals.



in three ways : (a) *change in the mental constitution* : this is done by influence upon and alteration of the mental factor although the mental factor can in many cases be influenced and altered only by influence upon and change of the environmental factor. (b) *change of environment* :—This is done by putting the individual in such an environment as harmonises with the mental constitution of the individual, leading to production of non-criminal conduct only. This second alternative can be practically worked out by removing the individual from one environment to another environment or by changing the existing environment of the individual. (c) *Physical control of the criminal* :—The physical control makes it impossible for the individual to commit the particular crime or crimes which he may otherwise commit.

A suggested classification of crimes.

(1) *Crimes for bare necessities of life*, in the objective lowest standard of living prevailing in the society ; crimes for satisfaction of hunger thirst ; crimes for shelter, clothing and other things necessary for bare healthy maintenance of life.

(2) Crimes for such necessities as are necessary for a civilised man of the station and position of the criminal in the society to which he belongs, other than those required by the lowest standard of living prevailing.

(3) Crimes for the preservation and rearing of children in the objective lowest standard of living prevailing in the society.

(4) Crimes for the preservation and rearing of children in the prevailing standard of living of the station and position of the criminal other than what is required for the lowest prevailing standard.

(5) Crimes for satisfaction of sexual instinct.

(6) Crimes originating in envy or jealousy.

(7) Crimes springing from lust of position or lust of power or lust of fame or lust for wealth (including all sorts of property lusts)

(8) Crimes for prevention of injury to person or property or reputation of oneself and of others, or for securing safety and preservation of the same whether of oneself or of others.

(9) Crimes by usurpation of the State's function to administer and enforce justice.

(10) Crimes as a habitual and deliberate profession followed in one's life; (a) those in which the predominant cause is in an ethically defective mind (b) those in which the predominant cause is in the environment. (c) those springing from a mental constitution which finds best satisfaction and realisation in a profession of particular crime or crimes but which could have also found satisfaction in some non-criminal profession suited to its nature if it had come in its way before its career of crime.

(11) Crimes for concealment of immoral acts or criminal acts of oneself or of another.

(12) Crimes of pathological impulses irresistible on the occasion of the commission of the crimes.

(13) Acts (resembling legal crimes though not crimes in law) owing to exemption of idiots, epileptics and persons of insane mind, being either automatic acts of Epileptic fits or such acts of which owing to unsoundness of mind, there is incapacity to know the nature or the legal quality of the act.

(14) Crimes of such feeble-minded persons as owing to their defective mental constitution want the prudence of the normal man.

(15) Crimes by breaches of laws which require acts or abstentions as are required by the current average morality as actually acted upon by the community to which the individual belongs by birth, tradition and education.

(16) Crimes by breaches of laws ethically superior to the existing current moral ideal or religious ideal of the masses or of the community to which the criminal belongs.

(17) Crimes by breaches of laws opposed to the existing current moral ideal or religious ideal of the masses or of the community to which the criminal belongs.

(18) Non-habitual and non-professional Crimes of some temporary fit of passion or of some temporary powerful provocation or powerful temptation.

(19) Crimes springing from love of activity or adventure in absence of proper field for exercise of the same.

(20) All sorts of Juvenile crimes.

(21) Crimes springing from discrepancy of the moral or religious ideal of the individual from the ideal of non-criminal conduct.

(22) Crimes committed under temporary unsoundness of mind caused by wine or some other substance.

(23) Crimes under the influence of any noble altruistic impulse or under religious influence.

Each of these classes of crimes may be subdivided into the following sub-classes, (a) Those being attempts to produce or producing death or grievous hurt ; (b) Those being attempts to produce or producing death or grievous hurt with torture ; (c) Those being attempts to produce or producing simple hurt or simple restraint or simple confinement ; (d) Those being attempts to produce or producing loss of such property of one who can not afford to bear loss of such property ; (e) Those being attempts to produce or producing loss of such property of one who can afford to bear loss of such property ; (f) Those—being attempts to produce or producing loss of a person's reputation.

The mental state of a criminal can be inferred only by the objective method of psychological study aided by what can be had from the criminal by a thorough and sifting examination of him which may be condemned under our present law as inquisitorial. The inference from the effect of the crime to the mental state is an use of the objective method, and on this principle, the classification of the subclasses has been made.

The same crime may fall under more than one head. A classification of criminals may be made on the basis of the suggested classification of crimes for use of proper methods for diminishing crimes.

SEC 6.  
Intellect of  
the criminal.

§ 6. A criminal may have all degrees of intelligence from intelligence of a genius to negation of intellent of an idiot. A truly intelligent criminal is seldom caught except by accident or in the ordinary course of misfortune that may overtake every honest profession of life. Most of the criminals of defective intellect are easily caught and sent to the prisons.

Mr. Havelock Ellis says :—"The two most characteristic features in the intelligence of the average criminal are at first sight inconsistent. On the one hand, he is *stupid, inexact, lacking in forethought, astoundingly imprudent*. On the other hand, he is cunning, hypocritical, delighting in falsehood, even



for its own sake, abounding in ruses." This description of criminal intelligence is applicable to many of the Jail population. Mr. Havelock Ellis says that men of undaunted intellectual power are sometimes found among criminals.

Forgetfulness of experiences relating to a particular aspect of life, may lead to imprudence in that aspect ; impulses wanting in controlling influence of experience in that aspect, may produce crimes. In other respects, the mind may be sound. A weak-minded thief who once served out a month's imprisonment for theft of a piece of cloth, may forget that experience when he is again tempted and may steal a second time in circumstances which may lead to his easy detection ; in case of good recollection he would also have been able to see that he would be easily detected, and this knowledge might have operated as a control ; but amnesia may prevent the coming into operation of this control. Dawson says :—" It is altogether probable that much of the incorrigibility among both juvenile and adult offenders strikes its roots in a sort of congenital amnesia."

The application of intelligence in practical life depends upon several factors, and the same man's operation of intelligence may be of various varying degrees in different moments of life. Criminals are subject to this law.

Dr. A. Kräuss speaks of astuteness of criminals. He says :—" The specialists say that criminals are more astute than intelligent. But what is this astuteness ? It is an instinctive innate faculty, *which does not depend on real intelligence*, and which is already found precociously perfected in children, in the lowest savages, in women and also in imbeciles ; although experience comes to its aid, it is never capable of artificial culture. It is essentially a faculty limited to the consideration of concrete cases and which is chiefly concerned with the deception of others. *The mental inertia so often combined with this faculty* is recognised in this, that a criminal, in planning a crime, does not calculate all the possible eventualities and immediately after the success of his action he loses all caution, as if the energy of his mind directed to the project and its execution was exhausted at one stroke."

The regularly-organised dacoit gangs who prey upon

society, the professional coiners, the professional forgerers of currency notes, the professional cheats, the professional criminals who do illicit traffic depriving and defrauding the excise revenues, the organised and intelligent professional thieves, professional receivers of stolen properties are certainly men not inferior in intelligence to the average normal honest citizen. Of the calculating criminal, Mr. George Ives says :—“The calculating criminal is the hardest to catch but the least difficult to deter. We have but to make the balance of results just unfavourable to the crime's commission ; and the contriving criminal will keep away.”

The professional blackmailers are certainly intelligent people. Mr. George Ives says :—“Certain blackmailers are almost as known as politicians and actors, only the witnesses and victims will not come forward, and the police can not get legal evidence complete enough to put before a jury.”

The machinery of law is sometimes the best friend of the intelligent criminal. He knows that he can not be convicted without evidence, and he uses his intelligence to keep off evidence against him. A man may be almost publicly known as a receiver of stolen properties but the Police may be helpless against him for want of proper evidence. A bold desperate intelligent criminal with the aid of other bold intelligent criminals, may become a regular power defying the law and may enjoy a prestige by rousing fear as keeps off people from deposing against him. His badly-earned money is available for engaging ablest counsels to defend him and to influence some Journal or Journals in the Press in his favour.

A criminal told Gisquet—the prefect of police, the following : “ \* \* \* What would become of me among honest men ? A bastard, with no one to take care of me, what could I do ? Become a shopman, earn at the most six hundred francs a year, and having sweated all my life, grow old and ill and finish at a hospital. \* \* \* I know well that we may end in prison ; but out of the 18,000 thieves in Paris, not one-tenth are in Prison, so that we enjoy nine years of freedom against one of prison. Besides, where is the working man who is not sometimes without work ? \* \* \* And then if we are arrested, we live at the expense of others, who clothe us, feed us, and warm us, all at the cost of those whom we have

robbed. I will say more. During our detention in Prison, we think out and prepare new means of success \* \* .”

Sir Robert Anderson says :—“The criminals who keep society in a state of seige are as strong as they are clever. \* \* Lombroso’s theories have no application to such men. Benson of the famous “Benson and Kerr frauds” was the son of an English clergyman. He was a man of real ability, of rare charms of manner and address and an accomplished linguist.”

Men who in a changed environment can do excellent things are certainly men not below the normal intelligence. Speaking of Transportation, George Ives in his History of Penal Methods says :—“It had removed a huge, if straggling army, amounting to more than a hundred thousand prisoners from the certainty of hopeless degradation and chronic misery, and it had afforded them a fresh start with real possibilities of being restored into the commonwealth. Left at home, those placed beneath the ban of society would merely have occasioned the erection of of prisons and work-houses ; as things were, *they established new states and developed a continent.*”

Every person who commits a crime is a criminal. In every civilised modern political society, there are more criminals who are never tried in the Courts than those who are convicted in the Courts. The prison populations are recruited from weak-minded people, from persons who commit crimes under temporary fits of emotion or impulse or temporary intoxication, from persons not acting with sufficient caution or not possessing sufficient influence and resources as would save them from conviction, and from such deliberate and intelligent criminals as are caught by accident or the mishap of profession.

A person may become wanting in caution and may expose himself to easy detection when committing a crime under a powerful impulse or emotion. A strong impulse by keeping away controlling memories and mental states from the mind, tends to produce want of prudence and foresight. A person under the goad of a maddening sexual impulse, although intelligent, may commit a sexual offence in a foolish unguarded manner. A maiden out of fear may kill her illegitimate child in foolishly unguarded circumstances. A poor man when he can neither get honest work nor food, impelled by hunger may steal



almost openly or may deliberately take to theft as a passport to Jail.

A person under extremely grave provocation may commit hurt or murder regardless of consequences. The temporary clouding of intellect through the strength of any strong impulse or emotion may take place in men of ordinary normal intelligence.

Tarde says :—"Far from presenting that absolute lack of foresight which Lombroso makes a characteristic of the criminal, the companions of Dostoievsky showed a calculation and a rare perseverance in the carrying out of all their plans for their purchases of brandy or their escapes in the spring : and the idea of their eventual punishment never ceased to be of concern to them. \* \* \* We must not exaggerate the psychological differences, especially the intellectual differences which distinguish the delinquent from ourselves. When we compare the various sorts of books—fiction, literature, history science etc.—that are read with more or less enjoyment in the Parisian prisons for both sexes with the reading that is more or less preferred in the municipal schools of Paris, we observe that the relative proportion of readers for each kind of writings is about the same in the former as in the latter."

SEC. 7.  
The conative-affective nature of the criminal.

§ 7. The normal human mind in its conative-affective aspect shows a co-ordinated system of emotions, impulses instincts, tendencies to action ; this co-ordinated system is composed of several systems of complexes or emotionally toned groups of ideas drawing all motor power from what is a conative tendency in one aspect and is at the same time an emotion or emotions from another aspect. In the non-criminal the co-ordinated system is in harmony with the ideal of non-criminal conduct.

The individual subjects may have three different kinds of adaptation to the ideal of non-criminal conduct : (1) Knowledge of the ideal of non-criminal conduct (2) A contemplative emotional predisposition or mere feeling for the ideal of non-criminal conduct (3) Actual adaptation of the conative impulses leading to behaviour which satisfies the ideal of non-criminal conduct. Each of the adaptations may be for part or whole of the ideal of the non-criminal conduct.

The presumption of law is that law is known to every

normal subject. The human courts are presided by imperfect human beings who in their helplessness driven by strong practical necessity, assume that law is known to every human subject. But as a matter of fact even the courts themselves on many occasions do not know what the law is on a point as is seen from the frequent differences among Judges on questions of law. Considering the gradually-increasing large extension of laws used in trials under criminal procedure, many normal members of the society do not often know the whole of the laws at present of cases tried under the criminal procedure. The complete knowledge-adaptation to the ideal state, of non criminal conduct of a highly-progressive modern may not exist in many normal intelligent subjects.

A large number of old crimes like theft, robbery, cheating murder, rape &c, are condemned by the moral opinion of present-day civilized societies. Such crimes may exist with absence of such moral emotions as would have prevented them or with such debilitated condition of such emotion as is helpless against some stronger motive leading to the crime.

The question of moral imbecility arises when a crime is also violation of the recognised standard of moral conduct, *Moral Imbecility* may be relating to a part more or less or the whole of the moral aspect of the Human mind. A person may know what conduct is stigmatised as immoral by social opinion without himself feeling it to be immoral in which case he has no moral internal perception of the same; or he may have a bare intellectualised form of moral judgment without having any recognisable impulse to conform to that judgment or without feeling any recognisable remorse in case of such immoral conduct. The normal member of the society has moral perception of the accepted prevailing moral ideal of his society and he admits its rule; but there may be occasions in his life when he prefers to follow some impulse or impulses contrary to the accepted Moral Ideal. Where this rejection of the claim of the Moral Ideal, produces crime, crime is the result of moral weakness.

Crime may spring owing to moral imbecility which is practical absence of moral sensibility. Crime may spring from weakness which simply means unwillingness of the personality to follow the moral ideal; and this happens when all the

complexes which constitute the empirical Personality produce a course of behaviour contrary to the Moral Ideal. The behaviour of a personality follows the course followed by the *mental complexes* which constitute the Empirical Personality of an Individual. In the normal moral man, the mental complexes constituting Personality develop in harmony with the prevailing accepted average ideal of moral conduct of the society to which he belongs.

The congenital element is the aptitude to develop a moral life *i.e.*, to have one's emotions and conative tendencies coordinated and organised in conformity to the average current social moral ideal, under proper education and environment. Aberration from the course of normal moral development may arise from two causes :—

(1) Defect in the aforesaid congenital element which may be called moral imbecility or moral idiocy corresponding to idiocy in the intellectual side.

(2) Absence of proper environmental influence and presence of improper environmental influence.

The relative strength of the individual emotions and conative tendencies may be such that they do not always work in harmony with the current moral ideal. Moral Imbecility or moral idiocy arises from absence of the higher emotions. But absence of proper environmental influence or presence of improper environmental influence, tends to produce a coordination or organisation out of harmony with the prevailing moral ideal. This disharmonious coordination may arise from the nature of the relative native strengths of the different emotions and conative tendencies in the individual.

The conscience or the moral ideal revealed by conscience involves operation of the emotions, the conative tendencies and the intellection of each individual mind ; as a purely psychological manifestation conscience is personal and individual, though the ideal revealed by it is always seen as an objective ideal. Under the same conditions and the same environmental influences, the "consciences" of the different individuals, tend to agree and to be common ; and thus, a social common ideal of moral conduct is evolved. The ideal of past coming through tradition and accepted uncritically through imitation, sympathy and suggestion comes to the individual as something objective



and common. And this common objective social ideal comes to exist side by side with the personal conscience of individuals. The moral sensibility is of the personal ideal or the ideal of personal conscience. Of all persons constituting a society, no two persons have the same identical environmental influences during the course of evolution of moral life. Apart from differences in wealth, social position, power, prestige, honour, moral and intellectual opinions and beliefs, traditions among different classes of men in the same society, no two individuals get the exactly similar treatment emotionally and by actual conduct from all other persons of the same community. In the society, each individual stands alone so far his purely personal interest is concerned, and has to look at the world from the perspective of his peculiar personal position. Thus, although all the members belonging to a community in one sense have a common social influence; in another sense, the social influence on each individual is personal, separate and not shared by a second person. This individual character of the social influence combined with the individual native constitution of the mind in its conative-affective and intellectual aspects, tends to produce personal variations of the objective social moral ideal. Within the same society' there are various social groups. An individual may have a small circle of friends and associates who exert a strong influence upon the mind of the individual. The smaller societies may have standards of moral conduct not fully agreeing with the common ideal of the wider group to which they belong. Thieves of a locality may have their society and their code of honour. Robbers of a locality may have their code of honour to which each member may pay implicit homage and obedience at serious personal sacrifice. We, thus, sometimes get criminals who think themselves morally justified for their immoral criminal conduct. A Milanese thief said to Lombroso; "I do not rob; I merely take from the rich their superfluities." An Italian thief, one Rosati said: "I am proud of my deeds; I have never taken small sums; to attack such large sums, I consider, a speculation rather than theft." A brigand chief said proudly to his judges: "We are necessary. God has sent us on the earth to punish the avaricious and rich. We are a kind of divine scourge."

Sir Robert Anderson says :—"The true professional is an advanced disciple of Hobbes. He is not embarrassed by either twinges of conscience or a sense of shame. And for such a man a criminal career is a life of adventure such as will compare favourably with most other kinds of sport." Sir Alfred Wills says :—"But there are others who follow crime as business of their lives. \* \* Such men are really hopeless. No punishment will alter them. \* \* They are teachers of crime both by precept and example and their exploits often throw a kind of halo of romance over crime which does infinite mischief."

Sir Robert Anderson says : "The controlling impulse is a love of sport, for every great criminal is a thorough sportsman. And in the case of a man who is free from the weakness of having a conscience, it is not easy to estimate the fascination of a life of crime."

Garofalo in his Criminology says :—"\* \* the fact nevertheless remains that the typical criminal is **morally a monster** possessed of some characteristics in common with the savages and still others which sink him beneath the level of humanity." This criminal is not the criminal of the law but the criminal of what he calls "natural crime."

Tarde says :—"Perhaps one is born vicious, but it is quite certain that one becomes a criminal. The psychology of the murderer is in the last analysis, the psychology of everybody. \* \* \* \* \* Let us observe *this titanic conceit of of criminals* \* \* also it is remarkable that in all times and in all countries, among the bandits of Corsica and Greece or among the Sicilian maffiosi just as among the degraded of our large towns, *pride is the dominant note of their character* \* \* \* "That which continues to justify the criminal in his own eyes is that he has no doubt but that the verdict of the neighbourhood in which he was born and where he lived acquits him ; he is sure that a minority of the people will not look upon him as absolutely lost, excepting, however, if the crime has been committed against people of his neighbourhood, against his brothers." \* \* \* As to the moral characteristics \* \* \* the two most betrayed, vanity and lack of feeling, are far from belonging exclusively to the criminal and can be the effect of crime as well as its cause.



I can say the same thing of *laziness* and lack of *remorse* \* \* \* Dostoevsky and Lombroso, like the majority of the Italians and the provincial magistrates have had to deal with *rural criminals who have little physical feeling*, like all the illiterate; whereas the malefactors cared for in the Parisian hospitals participate in the *general and characteristic hyperaesthesia of the inhabitants of cities*. The idea of attributing the lack of pity in the criminal to his relative exemption from pain is merely a conjecture without any proof. Another hypothesis seems to me to be more probable. It is, I repeat, that the monstrous egoism and the prodigious conceit as well, which are noticeable among criminals, are perhaps rather the consequences than the source of their crimes \* \* \* we forget the essential thing, which is the verdict by means of which the internal jury, an echo of outside opinion, cuts off the guilty man from the honest multitude, even before the latter shall have cursed or even blamed him. This imaginary division, with the morbid swelling of self-esteem and the hardening of the heart which follow it, complete his ruin. \* \* \* A woman whose one fault is made public is lost for ever. Inevitably the criminal is the result of his own crime just as much as his crime is his own work; also inevitably the criminal is partially the result of criminal justice. Excommunicated in everybody's eyes by this justice, he cuts himself off still more in his own eyes \* \* "In another place, Tarde says:—"The criminal always imitates somebody, even when he originates; that is to say, when he uses in combination imitation obtained from various sources. He always needs to be encouraged by the example and approval of a group of men, whether it be a group of ancestors or a group of comrades, whence arises the duality of the crime because of custom and the crime because of fashion."

A baby who in proper healthy environment, would have grown up an upright virtuous non-criminal good citizen, may under a bad environment grow up a professional murderer or a professional robber or a professional thief. The true social environment of a man is not the entire body of men of the society to which he belongs but only such living or dead men who influence the mind of the individual. Big cities are in case of many persons big wildernesses. To many, all outside



the few individuals among whom the individual lives moves and has his being, are strangers.

If the different emotions and conative tendencies of a person get legitimate and lawful spheres of activity, and can secure satisfaction lawfully, he may become one of the noblest and best citizens of the state ; but in the absence of the same, he may prove one of the worst criminals. Sir Robert Anderson says :—" A high-spirited boy with a thirst for adventure. developed and perverted by reading "penny dreadfuls" and frequenting low class theatres is easily carried away by the excitement of a life on the streets. And this is just the sort of boy who if allowed to go to ruin, is apt to become a dangerous criminal, though he has in him the making of a *splendid sailor or soldier*." There is no doubt that the many of the noble and the great, as well as the many of our worst criminals, were born with the same innate capacities and possibilities, but owing to divergent circumstances and conditions of life, the two parties passed to diametrically opposite ranks. It is never possible to supply to each and every human being, such worldly circumstances as would give necessary satisfaction and scope to the divergent emotions and conative tendencies of his innate nature, without tempting him beyond the boundary prescribed by law ; but this sort of maladjustment will always happen though sometimes the degree and extent of the maladjustment can be to some extent minimised by reasonable reforms. The remedy for this ever-recurring maladjustment—a perennial source of crimes—is in the higher spiritual culture of every individual mind, Literature Education, Institutions, the Press, the public opinion should work to help in everyway for subjugation of the refractory individual impulses when in case of maladjustment they tend to produce crime. The motor-power is in emotions and conative impulses. The very vigour and strength of the very emotions and conative tendencies which when finding sufficient scope within lawful bounds, promote strongly social good, under improper and uncongenial circumstances, leads to crimes. The problem of highest Ethics is not to kill these emotions and conative tendencies but to transform them and make them the best instruments for promotion of social good while preventing them from production of crimes. Dr Baldwin says :

—"over-socialization produces a softened individual and a weakened social life ; over-individualism produces a man whose tendencies are destructive of social interests and injurious to the general welfare. It is the balance of these forces, operating in the active situations of life, that establishes the highest society and contributes to the progress of mankind." A man may follow a profession of crimes of a class or classes but he may be, in other respects, a decent and good citizen.

Inspector Byrnes of New York says :—"Remember that nearly all the great criminals of the country are men who lead double lives. Strange as it may appear, it is the fact that some of the most unscrupulous rascals who ever cracked a safe or turned out a counterfeit, were at home model husbands and fathers."

Dr. Campbell—an experienced prison surgeon found the most hardened criminals bestowing great attention on the sick ; he found that by mild treatment, the greatest order was generally maintained in the hospital."

Persons having defective memories of consequences of crimes or possessing a defective conative-affective disposition which on memory of consequences do not exert the requisite defensive reaction, are led to crimes. These are crimes of weak-minded persons.

The crimes of sudden passions are due to a defective conative-affective disposition. The passion starts into life with the rapidity of electricity producing action, without allowing the controlling mental complexes time to come into operation. These occasional violent manifestations of passion may be due to (1) an innate defective mental constitution, (2) an acquired defect in mental constitution, (3) extremely provocative special circumstances ; or this manifestation may take place during (4) an ebb of mental life in minds subject to such fluctuations, under not very provocative circumstances.

The innate conative-affective disposition of every man changes under the influence of stimulating or repressive influences of the environment, and under exercise or want of exercise. George Ives says ;—" \* \* the weak-minded fatally impulsive person, just simply from lack of "grit" and "grip" may easily become and end a hopeless and habitual criminal \* \* But it must not be imagined that the impulse-offender



is always a mere drifting degenerate ; often indeed he is his own and only enemy—a man who may show real though generally capricious genius and who may be capable on great occasions of noble impulses and deeds of daring, which ordinary respectable and selfish citizens have not imagined even in their dreams. The impulse-offender is mostly unbalanced rather than bad and always far more to be pitied than condemned."

SEC 8.  
Free competition favours growth of a criminal disposition.

§ 8. Free competition flourishes on the deep self-love or selfishness of man. It utilises a very strong human emotion for various sorts of activities. In a society based on free competition, there is competition for livelihood, for wealth, for power, for honour, for place. Free activity strengthens passion ; free competition fosters the deep selfishness of man. From the ethical standpoint, the true criminals are the deeply selfish men devoid of all pity, all commiseration for their fellowmen. Selfish men who will deliberately sacrifice interests of others for his own interest, are found in all ranks of the society. Competition maintains and brings social success to many persons belonging to the anti-social type. This anti-social type is one of the best recruiting ground of criminality. Competition is civil war. In this war, the anti-social emotions—envy, jealousy, hatred, too much regard for one's interests, disregard of interests of others are fostered and strengthened. George Ives says :—Prisons will stand while unrestricted competition is the foundation of our social order." "In practice we have penalised compassion, we have imperilled generosity, we have exalted exploitation, we have rewarded gambling and greed."

SEC. 9.  
Sensitivity to pain.

§ 9. There are criminals whose sensibility to pain is very dull ; while there are others who have over-acute sensibility to pain.

SEC 10.  
Laziness.

§ 10. Laziness is a fruitful source of crime. When a man is not required to earn his livelihood but lives upon inherited wealth or wealth obtained from others, laziness would not ordinarily lead to crime. But one who is required to earn his livelihood and is at the same time lazy, must either beg or get something by unfair means. Mr. Havelock Ellis in "The criminal" says ;—"The criminal everywhere is incapable of prolonged and sustained exertion ; \* \* \* the whole



art of crime lies in the endeavour to avoid the necessity of labour. This constitutional laziness is, therefore, one of the chief organic bases of crime. Make idleness impossible and you have done much to make the criminal impossible \* \* \* the criminal is capable of moments of violent activity. He cannot, indeed, live without them; they are the chief events of his spiritual life."

Persons who either owing to bodily weakness or owing to bad training, become incapable of sustained regular industry, when required to earn their livelihood, would join the ranks of beggars, vagabonds and criminals; and he who is on one occasion a beggar may on another occasion become a criminal.

Laziness may spring from physical weakness or may be a mental vice. When persons of weak physical constitution do not possess sufficient intelligence and capacity to learn such profession in which a weak body is not a drawback and are too weak to earn livelihood merely by their muscles, and have not inherited wealth or help of others to depend upon, they tend to drift towards begging or crime or both. There are mentally defective persons who are unfit for liberty; a free-life makes them habitual idlers; only by compulsion whether of slavery or of some other form, they can be kept as regular workers. State-controlled compulsory labour for earning of livelihood is the best medicine for a class of criminals who in their freedom drift to habitual laziness and crime.

There are persons to whom in certain period or periods of life or during whole life every profession is repulsive save idle tramping in different places. Mere roving about at different places is joy of their life; if prevented from this, life becomes to them a misery. Society may tolerate satisfaction of such a passion when not accompanied with crime. When persons afflicted with this passion, has not means for livelihood or can not get what they require by begging, they may drift into crime.

§ 11. Havelock Ellis says:—"Even when a very large number of gross abnormalities are concentrated in a single individual, it is well-recognised by all serious students that while in such a case the physical abnormality is almost certainly correlated with nervous and psychic abnormality, it is not possible to say with absolute sureness what the nature

SEC. II.  
Inference of  
criminal  
mind from  
Bodily ab-  
normalities  
and Physio-  
gnomy.

of that psychic abnormality is." "At the present day, judges are consciously or unconsciously, influenced by physiognomy, and ordinary human beings who also in a humble way sit in judgment on their fellows, are influenced in the same manner. The modern criminal anthropologists, with all their minute and patient investigations, have not yet, however, succeeded in making criminal physiognomy a very exact science, and the more criminal amongst us, may still find consolation in the reflection that there are no unfailing criteria by which our crimes may be read upon our faces."

Tarde says:—"In spite of everything, there is no doubt that advancement in the trade of murder or theft ordinarily assumes a true vocation, more or less vaguely recognized by an experienced eye" " \* \* the special " "scent" which sometimes makes one discern among honest people the man who is dangerous and capable of any thing is much less guided by a vague feeling of a certain anatomical description that applies especially to vagabonds than by that of a physiological description."

According to Ferri, the data of criminal anthropology should be confined to congenital incorrigible and habitual criminals; that apart from these, there is a class of occasional criminals who do not exhibit or who exhibit in slighter degrees, the anatomical, the physiological and psychical characteristics which constitute the type described by Lombroso as the criminal man."

Mr. W. D. Morrison in "Crime and its Causes" says:—"In the first place, it can not be proved that the criminal has any distinct physical conformation, whether anatomical or morphological; and in the second place, it cannot be proved that there is any inevitable alliance between anomalies of physical structure and a criminal mode of life. But it can be shown that criminals taken as a whole, exhibit a higher proportion of physical anomalies and a higher percentage of physical degeneracy than the rest of the community."

#### SEC. 12.

The professional criminals.

§ 12. Like the professions of Law, Medicine and Divinity, there is such a thing as profession of crime. In every society, there are recognised non-criminal professions of earning livelihood, honour, riches, position. For success in these non-criminal professions, crimes may be committed as means. These are not professional crimes.



But person may deliberately commit recognised crimes as profession of their life, for livelihood, wealth, and for honour and position which the possession of wealth brings. These are professional criminals. The admission into the profession of crime may take place on deliberate choice or from a fall forced by circumstances. Repeated commissions of petty thefts or of such petty crimes by weak-minded persons, show, the appearance of a profession of crime but it ought not to be so styled in the strict sense of the expression. The different classes of criminals engaged in different crimes as profession sometimes form small communities which attract kindred natures forced into their society by stress of circumstances or simply drawn owing to their inner nature.

Tarde says ;—"Among the innumerable varieties of human nature which appear at the surface of a race and proceed perhaps from its lowest depths, every social or anti-social profession operates a selection to its own profit ; it attracts the organisms most adapted to the kind of life which it leads and to the end which it pursues."

According to Topinard, "Criminals constitute a special professional category in society in the same way as men of letters, men of science, artists, priests, the labouring classes etc. but a *complex category* in which the most diverse elements enter \* \* "

Ferri says : "not only in the case of criminals but *also of other professional or psychological groups of men*, there exists in certain cases a *bio-social type* in which either congenital or acquired characters prevail, accordingly as the individual is more or less disposed by his physico-psychical constitution to a given profession or is determined to it by family and social conditions. But besides this, there exists a *purely biological or anthropological type* of criminal in those cases in which the criminal tendencies are congenital or manifested in very early life, and are accompanied by anatomical, physiognomical, and psychical characters (complete moral insensibility, extraordinary improvidence) which can not be regarded as the products of the environment and social conditions alone." The criminal type may be a professional type as Tarde holds or may be an anthropological type or both. But this fact is certain that many criminals follow crime as a



profession and this profession of crime attracts persons having by birth congenial natures or persons to whom the professions gives ready field for exercise and satisfaction of their nature or persons having capacity to carry on the profession and forced into the profession by circumstances or persons who follow the profession as a family-profession or tribe-profession.

When different professions of different crimes exist in a society for a long time they became criminal institutions in that society and acquire the prestige, vitality and influence of traditional institutions.

Mr. Havelock Ellis speaks thus of those who according to him are professional criminals: "They are the elite of the criminal groups; they present a comparatively small proportion of abnormalities; their crimes are skilfully laid plots, directed primarily against property and on a large scale; they never commit purposeless crimes and in their private life are often of fairly estimable character. They flourish greatly in a civilisation of rapidly progressing material character, where wild and unprincipled speculation is rife, as in the United States; their own schemes have much of the character of speculations, with this difference, that they are not merely unprincipled but are against the letter of the law."

In India, the Thugs of old were professional criminals.

The hereditary criminals of the criminal tribes of India may be called also professional criminals. But in the crimes of many criminal tribes of India, we are in the borderland where an act of war is passing into an act of crime. India is a vast continent of many tribes, races, castes, religions, languages, civilisations. The common subjection of all these divergent elements to the rule of England, does not prevent some groups of men (many criminal tribes) looking upon the rest as strangers and foreigners robbing whom would be to them acts of glory. They enjoy and relish thefts and robberies among people outside their own tribe just as gentlemen enjoy their sports and hunt among the animal world. These criminal tribes are like separate nationalities standing outside the Indian social life.

§ 13. Where a religion preaches that salvation can never be had without a pure ethical life, and makes a pure ethical life more valuable than worship of God or any religious

creed or dogma, immoral crime can not exist with a deeply religious life. Wherever, in practice or in theory, religion exists in securing help and protection of a superior power by mere worship or performance of some non-moral ceremony a religious life is not inconsistent with crime. Where religious belief encourages any conduct which is a crime in law, such religious belief becomes an agent in the production of crime.

Mr. Havelock Ellis says:—"In all countries, religion or superstition is closely related to crime." "Among 200 Italian murderers Ferri did not find one who was irreligious." Mr. Kennan says:—"A Russian peasant may be a highway robber or a murderer but he continues nevertheless to cross himself and say his prayers."

Mr. Havelock Ellis says:—"It seems extremely rare to find intelligently irreligious men in prison. The sublime criminals whom we meet in Elizabethan dramas arguing haughtily concerning divine things and performing unheard-of atrocities are not found in our prisons. Free-thinkers are rarely found."

The ethical consciousness may or may not be an element in religious consciousness. The religious sentiment has an aspect in which it is purely non-moral, in which it is a prudent form of selfishness, its object being to secure self-preservation and self-advancement by reconciling the God of the religion. In actual life, this non-moral aspect of religious life is extensively in operation. An intelligent criminal devoid of moral sensibility, may be deeply religious from his deep and intelligent selfishness. Indian dacoits sometimes used to start for their criminal expeditions, after devout worship of goddess Kali. Th. Ribot says:—"Contemporary criminologists have shown that prostitutes and even ferocious criminals are most assiduous in their devotional practices."

§ 14. Many of the criminals are recruited from the feeble-minded. The feebleness may cause weak retention, weak recollection weak inhibitive control, weakness in the higher controlling emotions. Lack of prudence, want of foresight are found in the feeble-minded. They are easily caught after commission of crimes and can be easily induced to make confessions of guilt. Such feeble-minded persons, once

SEC. 14.  
The crimes  
of the feeble-  
minded



accustomed to prison life, may again choose to go back to prison life as a convenient shelter.

All persons who on account of incomplete cerebral development, are unable to perform their duties as members of society in the position of life to which they are born, should be regarded as the feeble minded. Dr. William Healy says :— “ All the feeble-minded should be regarded as highly susceptible to the suggestions of vice and crime and must be protected from them. The unguarded feeble-minded girl is a potential prostitute and the foundations of her treatment must rest in social protection.” Henry H. Goddard Ph. D. in “ The Educational treatment of the feeble-minded ” contributed in “ The modern treatment of nervous and mental diseases ” speaks of a type of defectives : they have normal intelligence but lack moral sense, moral judgment, moral stamina. They comprise the wayward girl, the incorrigible boy the ne’r-do-wells.

SEC. 15.  
The child  
mind, the  
juvenile  
mind and  
crime.

§ 15. The Indian penal code provides that nothing is an offence which is done by a child under seven years of age ; that nothing is an offence which is done by a child above seven years of age and under twelve who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on the occasion.

Our knowledge of the various rights of property and our emotion of respect for the same, are the result of growth, experience and education through the various channels of social influence. An infant may commit an offence against property owing to inability to judge of the nature and consequences of his conduct on the occasion. An infant without any conception of the highly complex social concept of property, is unable to see that he is committing theft by taking another’s property.

Mr. Havelock Ellis says :— “ \* \* They ( Children ) are cruel and inflict suffering on animals out of curiosity, enjoying the manifestations of pain. They are thieves for the gratification of their appetites \* \* \* and they are unscrupulous and often cunning liars not hesitating to put the blame on the innocent when misdeeds are discovered ” The cruelty of children mentioned by Mr. Havelock Ellis, is not to be found in the majority of children in Bengal.



Mr. Havelock Ellis mentions a certain form of criminality almost peculiar to children and described by Krafft-Ebing Mendel, Savage. This "is characterised by a certain eccentricity of character, a dislike of family habits, an incapacity for education, a tendency to lying, together with astuteness and extraordinary cynicism, bad sexual habits and cruelty towards animals and companions," Mr. Havelock Ellis says :—"It shows itself between the ages five and eleven and is sometimes united with precocious intellectual qualities. There can be no doubt that many of these develop into instinctive criminals. Sometimes these characters only appear at puberty, together with exaggerated sexual tendencies, in children who have previously been remarkable only for their mental precocity but whose energy seems now to be thrown into a new channel."

The instinct to live by preying upon brother men has never been the trait of the majority of the human race. This tendency never prevailed in the majority of savage-men, and from man's evolutionary history, it can not be inferred as existing in the majority of the children. There have been in all time and everywhere individuals or groups with strong instinct to live by preying upon brothermen but the majority of the human race have not been the victims of this instinct.

The child mind, the juvenile mind, are the best materials for moulding into different forms by the surrounding environmental influences including education. Early youth is the best period for education in crime. The adverse individual and social conditions form the best school for training of criminals. Many habitual and professional criminals learn their trade in the plastic period of youth. W. D. Morrison says :—" \* \* It is in these untouched and degenerate conditions of existence that juvenile delinquency has its origin, and it will always continue to flourish till these conditions are ameliorated." "The results of personal experience among large numbers of juvenile offenders, as well as the evidence just furnished by statistical investigations, have for many years, confirmed me in the opinion that among the many causes which produce a criminal life, *the physical inferiority of the offender* is one of the most important." "The defective mental equipments of juvenile offenders as a class originate either in a defective physical basis of mental life or inherited mental incompetence

and the evil effects of abnormal mental surroundings \* \* \*. At present the community confines its operation to bestowing industrial training on children who have actually fallen ; it is probable that it would be wiser and in the end a more economic policy to bestow a similar training on those who are likely to fall."

SEC. 16.  
Effect of  
Literature  
on the pro-  
duction of  
crimes.

§ 16. Informations and suggestions through literature, sometimes produce crimes. Mr. Havelock Ellis says :—" There is ample and unquestionable evidence to show that a low class literature in which the criminal is glorified as well as the minute knowledge of the criminal acts disseminated by the newspapers, have a very distinct influence in the production of young criminals. \* \* \* After every celebrated or startling crime, some weak-minded and impressionable persons go and commit the like or give themselves up to the police under the impression that they have been guilty of the crime. It is youths and children who are especially prone to the imitation of criminal events from books or from real life." Ideas and Emotions stirred by Literature may lead to crimes ; High class Literature from purely artistic point of view, may be very low Literature from the point of view of morals or Law. Control of Literature is necessary for prevention of crimes.

SEC. 17.  
Klepto-  
mania.

§ 17. A tendency to commit petty thefts is found sometimes as an irrational morbid tendency—a disease of the human mind. When this disease belongs to some rich and generous person, thoroughly moral in his behaviour in other respects there is no difficulty in making inference of the existence of a disease. But when this pathological condition happens in poor and necessitous persons it becomes very difficult to distinguish a case of genuine kleptomania.

Mr. Havelock Ellis in his "Sexual Problems, their nervous and mental relations " contributed in "The modern treatment of nervous and mental diseases" speaks of Erotic kleptomania leading to thefts for sexual gratification. Although he holds that Erotic fetichism lies at the root of some forms of kleptomania in women, he does not accept the theory that all kleptomania is a manifestation of Erotic symbolism. He says :—"of recent years, Stekel of Vienna and others of the Freudian school have argued that all kleptomania is a manifestation of erotic symbolism. \* \* This theory is some



what speculative and in the nature of it not easy of demonstration. \* \* ”

§ 18. A clear line of distinction should be always drawn between those sexual criminals who deliberately as a pursuit of pleasure, commit unnatural offence, or adultery or rape, and those who are the unfortunate victims of some temporary strong fit of passion under tempting circumstances or those whose cases may be treated as pathological cases in which the offenders appear to be the victims of uncontrollable impulse.

SEC. 18.  
Sexual  
crimes.

The instinct of sex is one of tremendous power affecting the human mind subconsciously and consciously. In its violent manifestations, it produces a condition of mono-ideism when all considerations contrary to the impulse do not enter consciousness. The repentance comes after improper satisfaction of the passion.

Dr. R. V. Krafft-Ebing in his *Psychopathia sexualis* says:—“Criminal statistics prove the sad fact that sexual crimes are progressively increasing in our modern civilisation \* \* \* The medical investigator is driven to the conclusion that this manifestation of modern social life stands in relation to the predominating nervous condition of later generations in that it begets defective individuals, excites the sexual instinct, leads to sexual abuse and with continuance of lasciviousness associated with diminished sexual power, induces perverse sexual acts \* \* \* Law and Jurisprudence have thus far given little attention to the facts resulting from investigations in psycho-pathology. Law is, in this, opposed to medicine and is constantly in danger of passing judgment on individuals who, in the light of science, are not responsible for their acts. \* \* \* To obtain the facts necessary to allow a decision of the question whether immorality or abnormality occasioned the act, a medico-legal examination is required

\* \* \* \* \*

“Psychopathic states may lead to crimes against morality and at the same time remove the conditions necessary to the existence of responsibility, under the following circumstances :

1. To oppose the normal or intensified sexual desire, there may be no moral or legal notions, owing to (a) the fact



that they may never have been developed (states of congenital mental weakness); or to (b) the fact that they have been lost (states of acquired mental weakness.)

2. When the sexual desire is increased (states of psychological exaltation) consciousness simultaneously clouded and the mental mechanism too much disturbed to allow the opposing ideas, virtually present, to exert their influence.

3. When the sexual instinct is perverse (states of psychological degeneration). It may, at the same time, be so intensified as to be irresistible.

"Under the following circumstances, indices are given which point to a pathological condition:—

The accused is senile. The sexual crime is committed openly, with remarkable cynicism. The manner of obtaining sexual satisfaction is silly (exhibition), or cruel (mutilation or murder), or perverse (necrophilia etc)"

Murders and hurts may be committed as pathological manifestations along with manifestation of sexual instinct.

Dr. Krafft Ebbing says:—The crime of rape may be followed by the murder of the victim. There may be unintentional murder, murder to destroy the only witness of the crime or *murder out of lust*. \* \* \* \* \* Lust murders dependent upon psychopathic conditions are never committed with accomplices."

The association of active cruelty and violence with lust is called sadism. Dr. Krafft-Ebing says:—" *Sadism* is the experience of sexual pleasurable sensations (including orgasm) produced by acts of cruelty, bodily punishment afflicted in one's own person or when witnessed in others, be they animals or human beings. It may also consist of an innate desire to humiliate, hurt, wound, or even destroy others in order thereby to create sexual pleasure in one's self. \* \* \* \* \* In the civilized man of to day, in so far as he is untainted, associations between lust and cruelty are found, but in a weak and rather rudimentary degree."

*Violation of animals.* Dr. Krafft Ebing says:—" Violation of animals, monstrous and revolting as it seems to mankind, is *by no means always due to psychopathological conditions*. Low morality and great sexual desire, with lack of opportunity for natural indulgence, are the principal motives

of this unnatural means of sexual satisfaction, which is resorted to by women as well as by men."

§ 19. A destitute person is one without a home or a shelter, without necessary food and clothing, and though willing and able to work, can not find work to earn his livelihood. In colder countries, man has greater needs for food, shelter and clothing than in hot countries; greater material wealth is necessary in cold countries to avoid destitution than in hot countries. During famines, we get a large number of cases of destitution. But in normal seasons, in every country, the question to be enquired into in every case of destitution is this:—whether the alleged case is one of habitual idleness or one of real destitution without any fault of the individual. Mr. Morrison says:—"The habitual beggar is a person who will not work. He hates anything in the shape of regular occupation, and will rather put up with severe hardships than settle down to the ordinary life of a working man \* \* \* once a man fairly takes to begging, as a means of livelihood, it is almost hopeless attempting to cure him. After a time, he loses the capacity for labour; his faculties, for want of exercise, become blunted and powerless, and he remains a beggar to the end of his days \* \* \* habits of indolence, and not the stress of destitution, are responsible for a great deal of the begging which goes on in England." In India where the general masses have not much anti-social positive vices, where poverty is not dishonourable there are thousands whom the direst poverty, the direst destitution can not tempt to any crime. Poverty and destitution may lead to commission of crimes but not in all cases. The caste-system secures for every member of the caste, a position in his small society in spite of extreme poverty and thus keeps the caste-opinion an effective agent in controlling his conduct. A man in a vast city away from reach of caste-influence, is in a wilderness where poverty may tempt him to any crime. The influence of ethical culture and tradition of many generations, on the basis of an ideal of poverty, self-control and renunciation, is still a potent force among the Indian masses.

Mr. Morrison in his "crime and its causes" says at one place; "It is, therefore plain that an increase in the wealth of a country is not necessarily followed by a decrease

SEC. 19.  
Poverty  
Destitution  
and crime.

in the amount of crimes against property; that in fact, the growth of national and individual wealth, unless it is accompanied by a corresponding development of ethical ideals, is apt to foster criminal instincts instead of repressing them." Mr. Morrison says:—"According to the returns for the two countries in the year 1888, it comes out that in England one person was proceeded against criminally to every forty-two of the population, while in India only one person was proceeded against to every 195. In other words, official statistics show that the people of England are between four and five times more addicted to crime than the people of India. On the supposition that poverty is the parent of crime, the population of India should be one of the most lawless in the world, for it is undoubtedly one of the very poorest. The reverse, however, is the case, and India is justly celebrated for the singularly law-abiding character of its inhabitants. \* \* \* The comparison we are now making between the criminal statistics of England and India is intended to show that economic conditions alone will not satisfactorily explain the genesis of crime. \* \* \* The economic condition of the average native born American is superior to the economic condition of the average emigrant; but the native American, notwithstanding his economic superiority, cuts a worse figure in the statistics of crime." In the same work, Mr. Morrison says further:—"According to Garofalo one of the most learned of Italian Jurists, the poor people in Italy commit fewer offences against property in proportion to their numbers, than the well-to-do, while in Prussia persons engaged in the liberal professions contribute twice their proper share to the criminal population. A somewhat similar state of things exists in France."

Material prosperity is not security against crime in all cases. Material prosperity may corrupt the individual and may lead him to commit crimes which he would not have committed in his poverty. Material prosperity may make a person proud, haughty; may tempt him to hate and look down upon others and may lead him to commission of crimes against person. Material prosperity may lead an individual to drink gluttony, luxury and licentiousness. Material prosperity may enkindle a greater thirst for power, for position, for wealth



for fame, and may tempt the individual to crimes for satisfaction of these passions.

§ 20. Punishment is infliction, (for some wrong or offence committed) upon any person against his will, of any state of body or of mind or of any change in his pecuniary, social or religious position or of any state of existence which he dislikes or which appears as against his self-interest and includes the means used for the purpose. Likings and dislikings are materially conditioned by the bodily and the mental constitution of the individuals. Hence what is punishment to one person may be a matter of indifferent value to another or even a source of pleasure. So far a number of persons have a uniform bodily and mental constitution, and so far they are equally affected by the same objective means, the same method of punishment may be applied to them. The same amount of fine which is ruinous and is terrible punishment in the case of a poor man, may be of no value and may be practically no punishment if imposed upon a millionaire. The same objective means (the same amount of fine) affect differently persons who are poor and persons who are very rich.

SEC. 20  
What is  
punishment

A person to whom life is sheer misery unless he can indulge in daily outdoor walks of considerable extent, would take confinement in a closet as a punishment, while a person who finds pleasure in a continuous sedentary condition and in unoccupied idleness of doing nothing, may find pleasure in confinement in a closet. Enforced idleness is punishment to the person whose joy is in continuous active work, while to the lazy habitual idler enforced regular work would be punishment. To mete out to all the same fixed measure of punishment is not justice. Equity loves equality or equal treatment. But the same quantity of a certain form of punishment can never be the same and equal punishment in the case of all persons. Equality of treatment can be only secured by considering the bodily and mental constitution of each individual and the painful effect of the punishment upon each individual; small differences may be ignored for practical purposes; but real justice can not be secured by ignoring the material and substantial differences. The question to what extent and by what procedure—owing to the difficulty of ascertaining these

material and substantial differences within the time that can be reasonably given by law courts for the purpose and to avoid suspicion of unequal treatment,—the law courts should individualise punishment, is a question of legislation and policy of law. Criminal Courts shall have not only to give justice but should always make the public believe that justice is being fairly administered and should avoid any suspicion of injustice as far as practicable.

SEC. 21.  
The mother  
emotion of  
punishments  
and its oper-  
ation.

§ 21. Punishment originated in *the instinct of revenge and retaliation*. Every normal organism has defensive reaction; this defensive impulse in one manifestation in the human mind is the *instinct of revenge and retaliation*. Letourneau says:—"The reflex instinct of defence is the biological root of the ideas of law and justice, since it is evidently the basis of the first of laws—the law of retaliation." George Ives says "Punishment which is cold revenge deferred or systematized, arising from instinct, is ancient and universal. And everywhere we find it existing; and all the various and conflicting reasons which may be assigned for it—when any are needed for a feeling so natural—are added on afterwards." "Punishments are not remedies which were devised by man's reason but concessions to sub-human instincts which stir in him."

When no other emotion comes into conflict with this instinct of revenge or retaliation, the emotion justifies its own conduct, and the human mind is not disturbed to seek any other rational justification. In many minds the law of revenge and retaliation is its own rational justification for infliction of punishment. When Pity is roused and pleads against infliction of punishment upon brothermen, then the process of rationalisation comes into operation and the human mind seeks for rational justification of a course of conduct to which he is strongly prompted by the instinct of revenge and retaliation but against which Pity pleads. This rationalisation is effected by making punishment flow from some principle to which personal Pity must submit.

Some methods of rationalising punishment are as follows:—

(1) *Punishment is justifiable so far necessary for the moral improvement of the wrong-doer.* In the light of this principle, the punishment is only a small evil for securing a



greater good of the individual-offender. In these cases, *true pity* for the individual personality would require infliction of punishment. The end of revenge and retaliation, thus, becomes merged in and identified with the end of personal pity

(2) *Punishment is justifiable so far necessary for securing a greater total happiness of the Human Race including the offender or offenders.* The principle of utility namely securing the greatest possible happiness for the greatest number of the Human race rests on the instinct of pity broadened and extended to cover the whole of the Human race. Pity for all including part is superior to pity for part. Bentham says :—"The general object which all laws have or ought to have, in common, is to augment the total happiness of the community ; \* \* \* But all punishment is mischief ; all punishment in itself is evil. Upon the principle of utility, if it ought at all to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil."

(3) *Punishment is justifiable so far necessary for securing a greater total well-being or good or Perfection of the personalities composing the Human Race including the offender or offenders.*

(4) *Punishment as deterrent.* Punishment is justifiable so far necessary for deterring the wrong-doer or the wrong-doers from committing crimes in future and for deterring others from committing crimes. The principle of deterrence is only a subordinate principle -a means for promoting the highest social happiness or good or well-being or perfection.

(5) *Punishment is just wages of wrongful conduct, and may be inflicted as justice by any public functionary secular or religious or by the state or by superhuman power or by impersonal law or by the individual wronged, or by the wrong-doer himself upon himself.* Personal revenge is condemned by pity ; but in the evolution of moral consciousness of the human race, in many minds, infliction of punishment for wrongful conduct appears as *administration of the principle of justice* to which personal pity must bow. In the evolution of consciousness that punishment is necessary for justice, there enter into operation the instinct of revenge and retaliation rendered impersonal through operation of laws of



sympathy and transference, conscious or subconscious perception of the value of punishment for individual welfare and and social order and well-being, the influence of the laws, practice and institutions for inflicting punishments existing from the hoary past, the influence of the traditional beliefs about infliction of punishment. A sense of justice to be practically vigorous for securing punishments for wrong-doers, must rest on subconscious operation of a vigorous though masked instinct of revenge and retaliation, transformed and merged in the vitality of the sense of justice. The consciousness of punishment as a law of justice, may induce the wrong-doer to punish himself as expiation. To make punishments acceptable to the general masses and effective upon the personal criminal mind, in the present stage of mental evolution of the human race, appeal should be made in most cases not to the principle of revenge or retaliation, not to the principle of social well-being or social protection, but to an impersonal principle of justice which requires the criminal to punish himself for his crime and according to which punishment is the natural just wages of crime.

(6 *Punishment is justifiable only in social defence and as a means of social protection.* The human society is an organism ; a living organism of biology is justified in doing what is necessary in self-defence ; the human society as an organism resembling the organism of biology, is justified in dealing out punishment when necessary in self-defence. These ideas consciously or subconsciously operate in a mind accepting the present principle. Pity or Love for the entire social group including the offender, which is superior to pity for the individual only, is the emotion which supplies motor power for belief and practical application of this principle ; but in vigorous practical application of this principle by actual infliction of punishments, the instinct of revenge and retaliation supplies a material portion of the energy. Through the operation of the Law of Transference, the instinct of revenge and retaliation may respond when social safety and well-being is endangered or violated.

The 4th, principle of punishment as deterrent and the 1st principle of punishment as necessary for the reformation of the individual-offender, may be used as subordinate prac-

tical principles by those who inflict punishment for securing the greatest social happiness or well being or perfection or in social defence. Whatever rational justification of punishment may be accepted, for vigorous practical activity for securing infliction of punishments on wrong-doers, a strong instinct of revenge and retaliation must operate, although it may operate in a masked form from subconscious depths under the guise of the rational principle accepted, remaining transformed and merged in the vitality of the rational principle.

§ 22. But for the instinct of fear, punishment would produce no effect on the Human Mind. This instinct is a conative self-preservative tendency which tends to make the individual avoid all that is painful, unpleasant, against his liking and whatever appears to the individual as against its self-interest. The feeling-element may be very insignificant or may be very intense. Very excess of feeling-element may be accompanied with paralysis of the conative-element which secures behaviour protective of self-interest. Fear is a conative tendency as well as an emotion: it may be called the will for preservation of individual self-interest, the creative force working in the mental plane for the preservation of individual life. The superior evolution of this instinct consists in the increase of vitality strength and prompt operation when required of the conative-aspect or the will-aspect, and the gradual wearing out of the feeling-element and of the physiological manifestations. The reflex brute's fear with manifest physiological manifestations shall pass into the calm passionless tranquil fear of the rationalised personality which appears as a vigorous, active, resourceful, ever-watchful, passionless will engaged in manifold activities for preservation of self-interest of the individual. In the superior developments, the instinct of fear becomes masked and operates from subconscious depths as the force behind certain principles of behaviour adopted by the individual for preservation and promotion of what he feels to be his self-interest.

Nature impels the creature to avoid certain conditions and activities of the body by associating pain to those conditions and activities. Pain has been called the Nature's sentinel of a bodily disorder. If to crimes pain can be associated with the fixity, certainty of pain accompanying certain bodily states

SEC. 22.  
The emotion  
which gives  
value to  
punishments  
and its  
operation

and activities, the result would have been the same as happens under the Nature's infliction of pain. But no human society can organise any machinery for associating pain to crime with the fixity and certainty of Nature's work. The full operation of fear for avoidance of crimes can not, thus, be secured.

For understanding the question of efficacy of punishments, the following psychological facts should be considered :

(1) When there is a temptation to commit a crime, the actor must then have knowledge that his act would be a crime to which punishment is attached.

(2) The actor will consider the chance of detection, the the chance of conviction if detected, and what punishment may be inflicted upon him in case of conviction, and also the chances of escaping or diminution of that sentence ; he will also consider the possible pecuniary cost of securing freedom from conviction in case of detection. He shall have to weigh all these probabilities. He will also consider the quantity and nature of punishment that may probably be orderd in case of conviction. In the consideration of all these probabilities various mental factors will come into operation. His motive to commit crime will be a predisposing factor to pervert his recollection and judgment. If under the influence of the various complexes that operate in these processes his fear for the punishment triumphs over his motive to commit the crime, then in that case punishment would be said to have become operative. The Ethical complexes in him usually come into operation also to support or retard the fear of punishment ; his habits of thinking and acting also come into operation. Full proper deliberation may be prevented in many cases, there being only partial deliberations.

(3) If the man be one of very timid disposition or if he has been accustomed always to avoid the punishment of law, his formed character to obey criminal law may automatically lead him to act without any deliberation at all.

(4) The strong impulse operating as the motive to crime may act with such rapidity as not to allow any inhibiting complex to come into operation.

(5) The strong impulse operating as the motive to crime though not immediately leading to crime, may inhibit and



rule out coming into operation of the mental "complexes" that would have saved him from crime.

(6) Although ignorance of law is no defence, as a matter of fact, there may be ignorance in many cases of some part of the substantive law enforced under criminal procedure and certainly as regards the quantity and exact nature of punishment, there can't be certain knowledge in many cases.

(7) Words are powers in virtue of their conative and emotional associations and values. A person may not care to lose one pound but he may have actual horror of being deprived of one pound under the designation "fine." A man may not care to suffer worse miseries than a prison-life affords for considerable period but he may have horror of suffering such miseries under the concept of "prison-life." Most people have fear of what is strange or unknown or inexperienced. A person who never has been in prison may have greater fear of prison-life than one who has been there, and in most cases relating to prisons of modern civilised peoples, this remark applies.

The fear of punishment fails to prevent commission of crime in many cases :

(1) Where there is no knowledge that punishment has been attached by law to a certain conduct, the fear does not arise at all,

(2) There may be knowledge but the actor may deliberately prefer the possible evil consequences of the crime to avoidance of the crime.

(3) Owing to weak-mindedness, the recollection about punishment or the value of punishment may not arise; even in case of recollection, the motor reaction of conative fear may not be sufficient owing to weak-mindedness.

(4) Owing to intensity of the impulse leading to the crime, the recollections which would bring the the conative aspect of fear into play may not take place at all or may not take place with sufficiency or the conative element of fear may not sufficiently come into operation.

(5) The conative effect of fear varies in different minds. The same circumstances which rouse fear in one, may not rouse fear in another,

In many normal men, the knowledge of the disastrous consequences of venereal diseases, does not deter them from sexual immorality leading to venereal diseases ; similarly in some minds, the knowledge of punishment may not deter them from commission of crimes. George Ives says : "Now in reality the Law can never excite more than a vague fog-looming distant terror in the average mind." "And every offender, in so far as he or she may be said to calculate at all, counts on not being caught. This fact it is which really nullifies the force and truth of the deterrence theory." "The average offender always thinks he will escape, not as a result of any hard or laborious reasoning but principally because he hopes he will and because he has a sort of general idea—if he is an habitual criminal, a very practical and soothing experience—that a great number of people do remain uncaught and at liberty."

A highly competitive age fosters the gambling spirit. In the over-crowded walks of life where large fortunes await the the successful man, the hope engendered by the gambling spirit is a great sustaining force through unsucccess and dark days. The absence of foresight of the criminal is, in many cases, the result of a gambling spirit. George Ives says "why, he (the criminal) gambled in chances, trusted to luck, to charms, to pieces of coal, horse shoes or even relics ; through which he hoped to escape detection (and then there would, of course, be no unpleasant penalties to consider) and seldom bothered much about consequences."

SEC. 23.  
Bentham's  
view :  
cases where  
punishment  
should not  
be inflicted.

§ 23. Bentham says :—

" \* \* in the following cases punishment ought not to be inflicted.

1. Where it is groundless : where there is no mischief for it to prevent ; the act not being mischievous upon the whole.

2. *Where it must be inefficacious* : Where it can not act so as to prevent the mischief.

3. *Where it is unprofitable or too expensive* : Where the mischief it would produce would be greater than what it prevented.

4. *Where it is needless* : Where the mischief may be prevented or cease of itself, without it ; that is, at a cheaper rate."

§ 24. The problem of efficacy of punishment in practical administration, requires the help of the scientific methods of extensive observation and discovery of the relations existing between any particular kind and quantity of punishment and particular offence in a particular society under certain conditions. The relations which are found in one country between the different offences and the different degrees and kinds of punishment may not be found as prevailing in a different country under different conditions. Careful compilation of criminal statistics in different countries is of help. In a society, the Penalty of death may be safely abolished whereas in another country in certain cases it may be of vital importance. Considering the nature of influence of punishments on weak-minded criminals, the nature of crimes committed by them, it may become desirable to exempt them from punishment but to keep them under perpetual guardianship; but this is a matter which should be settled not by intuition but by the logic of experience.

SEC. 24  
Treatment  
of crime.

If experience shows that the crimes of violent outbursts of passion cannot be prevented by punishment, it would be desirable to exempt such cases from punishment while taking necessary possible precautions to safeguard society from the effect of any such violent outburst of passion in future and by compelling them when desirable to live in an environment where such outburst of passion may not be possible.

In the case of normal good citizens suddenly led to commit a crime by some violent passion under extremely provoking circumstances, experience may show that the terror of punishment cannot prevent such offences; in these cases to avoid demoralisation of entire non-punishment, a light punishment may be inflicted and full pecuniary compensation to the aggrieved party or parties may be enforced.

In the case of offences committed not habitually but only under some strong occasional temptation, experience may show that enforcement of full pecuniary compensation plus suspended sentences of some punishment to fall over the guilty individual during a limited period (which in case of good behaviour would lapse) may be sufficient. The infliction of brutal punishments like flaying alive or burying alive is so revolting and shocking, and its effect would be so much



demoralising that they should not at all be imposed in our times. The evil caused by these punishments would be greater than any evil that they might prevent. The evolution of the highest and noblest types of personalities is the highest end of social life ; any punishment which seriously endangers this end, will be always *unprofitable or too expensive*. It is a problem for discussion for every particular community whether on this principle, under the peculiar circumstances of the life of that community death-penalty and flogging should be allowed to prevail in that community.

In many cases, crimes may be prevented by controlling the environmental factor. By preventing sale and manufacture of alcohol, wherever not productive of any greater evil, crimes arising from alcohol intoxication may be prevented. Where a master keeps his money within easy reach of his very poor and very needy servant, not known to be above temptation in the matter and if the servant steals, the master is the tempter and is culpable in the eye of Higher Ethics. When poor people can neither get employment nor food, they may steal for satisfaction of hunger ; but such thefts may be prevented by giving them employment or food. If weak-minded persons who may commit crimes as a result of their weak-mindedness, be sorted out and taken care of beforehand, they may not commit any crime. If vagabonds and beggars who have taken the profession of begging owing to reluctance to regular work, be taken care of and compelled to work regularly for earning their requirements, the crimes committed by that class and springing from the nature of their living may be prevented. By proper control and education at proper time of boys who grow up as street idlers in large cities, crimes springing from that class may be prevented. Every system of national education should see that there is legitimate scope for satisfaction of the ambitions which it engenders ; when those ambitions can not be lawfully satisfied, they may lead to crimes ; every society should control the system of education in such a way as to secure a harmony between the ambitions created and the available lawful field for satisfaction of the same. The machinery of punishment is only one of the various agencies that may be employed for prevention of crimes in society.

§ 25. The clear and distinct statutory recognition of principle or principles of punishment is essential for determining the quality and nature of punishment that is to be inflicted in a particular case. In the absence of the same and in the absence of proper statistical materials, the work can proceed only on the basis of tradition and precedents of court.

SEC. 25.  
Principles  
for working  
out propor-  
tion between  
punishment  
and offences.

(1) *One principle of punishment is satisfaction of revenge.* On this principle, the degree and kind of punishment for each particular offence would be such as satisfies the thirst for revenge aroused in the particular case. Although this principle is revolting to the pity-smitten conscience of higher humanity, the emotion of revenge still loiters in normal human hearts; and when the State prohibits the individual from inflicting punishment for satisfying revenge, the State to prevent breaches of law from unsatisfied revenge can not ignore entirely this principle. To what extent this principle should be applied in State's punishments is a question of expediency under particular circumstances, but it should be always subordinated to the principles of social protection and securing the Highest good of the Society including the criminal.

(2) *The quantity of punishment varies directly with the degree of Free-will.* This is one moral principle for regulating the amount of moral punishment, and is an auxiliary principle to the principle namely that *punishment is the wages of morally wrongful act of Free-will.* This belief of our moral consciousness for regulating the amount of punishment, may be applied by Law Courts. For correct application of this principle, Free-will should be understood not in a metaphysical sense. This "Free-will" is the capacity of the normal members of the Society to perform the legal and moral duties performed by the normal non-criminal morally good members of the Society, under the ordinary environmental circumstances. This normal capacity of average good citizen (this Free-will which is a reality in nature like other things) may be affected in three ways: (1) Abnormal activity of any cause within the mind, for instance a native abnormal passion (2) Some environmental special extraordinary factor, for instance, a very grave provocation, birth and breeding in poverty, destitution and vice. (3) Something wrong in the body which

perverts the mind. For instance, a victim of a protracted debilitating illness may considerably lose his normal will-power.

In all cases in which immoral actions spring from a Human will, not in its normal condition owing to any one or more of the aforesaid three causes, our tendency is to take a very lenient view and to dispense with considerable degree of responsibility. This measurement of degree of responsibility for punishment or of demerit, is based on recognition of a normal type of Free-will and the cases of loss of the power of that Free-will under what are regarded as abnormal circumstances. The nature of the abnormal circumstances which may be allowed as extenuating circumstances, as taking away partly or wholly responsibility, depends upon the existing state of social opinion. The principle that quantity of punishment should be regulated according to the degree of Free-will depends upon the existence of certain objective Socio-psychological standards of "Free-will" and of "Diminution of the capacity of that Free will" causing diminution in responsibility. These objective standards may vary in different societies and in different ages and among different portions of the same society. The recognition of this principle is a part of our moral consciousness and one can not ignore it, without injuring our moral consciousness. This principle should always control the principle of revenge and shall give way only when necessary for the personal reformation of the guilty. *The Free-will* of the principle that *punishment is the wages of morally wrongful act of Free-will*, is a non-metaphysical *Free-will* which is a Socio-psychological concept of a real existence in nature, being part of the nature of man.

(3) *Punishment allowable to the extent and of the nature so far necessary for the reformation of the wrong-doer.* This principle rests on the fact that lesser evil is preferable to greater evil. This principle ought to prevail in case of conflict, against the principles of revenge and degree of Free-will just stated, and also against the principle of deterrence stated afterwards but must yield when required in the interest of the very existence of society itself.

(4) Punishments, and also their nature as well as their degree, should be regulated according to the requirements of creating motives for deterring generally the members of the



Society as well as the individual from commission of crimes. *This is the principle of deterrence.*

In the application of the principle of deterrence, the following principles (taken from Bentham) may be used :

(a) The value of the punishment must not be less in any case than what is sufficient to outweigh that of profit of the offence.

(b) The greater the mischief of the offence, the greater is the expense which may be worth while to be at, in the way of punishment.

(c) Where two offences come in competition, the punishment for the greater offence must be sufficient to induce a man to prefer the less.

(d) The punishment should be adjusted in such manner to each particular offence that for every part of the mischief there may be a motive to restrain the offender from giving birth to it.

(e) Wherever the value of punishment falls short either in point of certainty or of proximity, of that of the profit of the offence, it must receive a proportionable addition in point of magnitude. To enable the value of the punishment to outweigh that of the profit of the offence, it must be increased, in point of magnitude, in proportion as it falls short in point of certainty. Punishment must be further increased in point of magnitude, in proportion as it falls short in point of proximity.

(f) To make sure of giving the value of the punishment, the superiority over that of the offence, it may be necessary in some cases, to take into account the profit not only of the individual offences to which the punishment is to be annexed but also of such other offences of the same sort as the offender is likely to have already committed without detection. Where the act is conclusively indicative of a habit, such an increase must be given to the punishment as may enable it to outweigh the profit not only of the individual offence, but of such other like offences as are likely to have been committed with impunity by the same offender.

(g) That the quantity actually inflicted on each individual offender may correspond to the quantity intended for similar offenders in general, *the several circumstances influencing sensibility* ought always to be taken into account.

(4) In adjusting the quantum of punishment, the circumstances, by which any punishment may be rendered unprofitable, ought to be attended to.

(5) Among provisions designed to perfect the proportion between punishments and offences, if any occur, which by their particular good effects, would not make up for the harm they would do by adding to the intricacy of the Code, they should be omitted.

The practical adjustment of the degree and kind of punishment to different offences, is a matter of great difficulty. Every state ought to have a separate department for collection of all sorts of materials on the basis of which light may be obtained by judges for helping them in this direction.

Punishment is an evil and should be resorted to only to avoid a greater evil. In the application of the principle of deterrence, it should be remembered, that no sort of punishment should be allowed which degrades or ruins the moral, the intellectual, the spiritual, and the nobler nature of the individual criminal or which retards the growth of higher and nobler personalities in the society, except to protect the very existence of the Society itself.

The principle of deterrence must work in subordination to the principle stated before, that the quantity of punishment varies directly with the degree of free-will, save when otherwise required for protection of the very existence of the society. There should be similar control over the operation of the principle "The greater the mischief of the offence, the greater is the expense which it may be worth while to be at in the way of punishment."

The infliction of savage and morally repugnant sentences on an unfortunate criminal who happens to be caught by accident, only because a very large number of such criminals can not be caught, is prejudicial to proper social well-being. The method of punishments has its limits; where the method of punishment fails materially in certainty and proximity other remedies should be tried, rather than make the judge pass inhuman sentences on some unfortunate criminal caught by accident. To make up for defect in certainty and proximity, punishments may be enhanced only to such extent as

does not produce a general demoralising and degrading effect and become really more-injurious than the evil prevented.

(5) Punishment is an evil; this evil should be allowed and its quantity and degree should be regulated so far necessary for social protection. This protection may be mere defence of the self-preservation of the society or it may include also defence of all the conditions necessary for continuous progress of social life and for securing the highest possible social good. This *good* may be treated as Happiness or highest possible evolution of all the personalities constituting the society. A true conception of happiness would show that the greatest happiness of the greatest number of the present and future members of the Human Race can be secured by the highest possible evolution of all the personalities constituting the Human Race. In practical application of this principle, as including defence of social stability and social progress the four principles stated before, may be applied, each having certain limits for operation according to circumstances; the scope and function of each being regulated and controlled, by the controlling principle of self-defence of social existence and social progress, for securing the highest possible social good.

(6) Bentham's view as to the properties to be given to a lot of punishment, is important in this connection and these are mentioned here:—

(a) *Variability*:—"Variable in point of quantity in conformity to every variation which can take place in either the profit or mischief of the offence" (Bentham)

(b) *Equability*:—"The quantity of pain produced by the punishment will, it is true, depend in a considerable degree upon circumstances distinct from the nature of the punishment itself: upon the condition which the offender is in, with respect to the circumstances by which a man's sensibility is liable to be influenced. \* \* \* There are some punishments, of which the effect may be liable to undergo a greater alteration by the influence of such foreign circumstances, than the effect of other punishments is liable to undergo" (Bentham)

(c) *Commensurability to other punishments*.

(d) *Characteristicalness*:—"The idea of punishment should be associated with some part of the offence. "The



closest analogy that can subsist between an offence and the punishment annexed to it is that which subsists between them, when the hurt or damage they produce is of the same nature." (Bentham)

(e) *Exemplarity*:—"It is the apparent punishment, \* , that does all the service, I mean in the way of example, which is the principle object. It is the real punishment that does all the mischief." (Bentham)

(f) *Frugality*:—"As punishment is an expense and an evil, there should be frugality in its administration."

(g) *Subserviency to Reformation*.

(h) *Efficacy with respect to disablement in certain cases*.

(i) *Subserviency to compensation*:—"This property of punishment, if it be vindictive compensation that is in view, will, with little variation, be in proportion to the quantity: if lucrative, it is the peculiar and characteristic property of pecuniary punishment." (Bentham)

(j) *Popularity*:—"By popularity is meant the property of being acceptable or rather not unacceptable, to the bulk of the people, among whom it is proposed to be established \* \* \* When the people are satisfied with the law, they voluntarily lend their assistance in the execution: when they are dissatisfied, they will naturally withhold that assistance; it is well if they do not take a positive part in raising impediments. This contributes greatly to the uncertainty of the punishment." \* \* (Bentham)

"Every nation is liable to have its prejudices and its caprices, which it is the business of the legislator to look out for, to study, and to cure." (Bentham).

(K) *Remissibility*:—"It may happen that punishment shall have been inflicted, where, according to the intention of the law itself, it ought not to have been inflicted \* \* \* at the time of sentence passed he appeared guilty; but since then, accident has brought his innocence to light" (Bentham).

§ 26. Punishment per se is an evil. The different forms of inflicting punishment produce different effects upon different minds. The human mind is an individual property; every form of punishment affects differently different individuals. The deterrent effect is produced by fear aroused from the idea of

punishment in persons who never had suffered punishment before. In every community, there are certain objective prevailing emotion-coloured beliefs about different criminal punishments. The average individuals who have not suffered any criminal punishment, are automatically influenced by these emotion-coloured beliefs which he catches from people around. But this influence ceases relating to a particular punishment, after he had once suffered the same.

Having regard to differences in individual mental constitution, the various psychological motives from which crimes may spring and also the divergent environmental influences influencing these psychological motives, a wider elasticity and variety in nature and form of criminal punishments, are desirable than those which now prevail in British India or in England.

The judicial tribunals should stop after declaring the guilt or innocence of the accused. There should be a separate department properly trained for the purpose who on proper enquiries into criminal's past life, criminal's character and constitution of mind, the psychological motive for the present crime and the environmental factors that might have led to the commission of the crime, would determine what should be done for reformation of the criminal and in social self-defence, and what kind and degree of punishment should be inflicted if any punishment is to be inflicted at all. This department should be given considerable freedom in choice of particular means of inflicting punishment.

All criminals who commit crimes by appropriating moveable properties such as thieves &c., shall be compelled to disclose what they did with the properties obtained by crime; and in case of their disobedience, they may be kept imprisoned, apart from such punishment which may be inflicted for the crime, in such manner as is deemed proper, till the requisite disclosure is made. If the articles of theft and robbery can be recovered in a larger number of cases and those who receive and dispose of stolen property or robbed property can be brought to punishment, much will be done towards prevention of crime. Liberty of deliberate criminals who follow crime as a business may be restrained so far necessary for social protection, till the time when they become morally reformed and fit to enjoy

full liberty. Those who are incorrigible professional criminals should have their liberty restrained through the whole of their life-time. In all offences against property from motives of gain, pecuniary compensation should be always recovered for the injured, from the guilty person, and where the guilty person has not sufficient property and where the property lost is not recovered, the loss may be realised by compelling the guilty person to compulsory work to earn the compensation allowed. Light assault and light hurts arising from haughtiness, pride, bad temper, may be sometimes punished by some sort of apology in public and by some sort of public humiliation. On some occasions, a person may be punished by a sort of exile (*i. e.*, by excluding him from certain defined locality or district or a larger division of land). In many cases, instead of sending persons to prison they may be sentenced to compulsory labour from which they are to earn their livelihood and also to secure fund for payment of compensation to the offended. There should not be any limit to the amount of fine. To secure the effect of a fine of one hundred rupees on a poor man, it may be necessary to fine a rich man several thousands of Rupees. In all offences of greed, the machinery of fine may be largely utilised. From the funds raised by imposing fines upon criminals and by confiscation of criminal's properties, the undoubted victims of crimes who do not otherwise get compensation may be sometimes compensated to such extent as is thought advisable. Corporal punishment not of a savage inhuman character, may be sometimes more beneficial from all standpoints than imprisonment.

Imprisonment under civilised conditions to the very poor of the labouring classes, may be no worse than a mere case of some inconveniences when his liberty is restrained and when he can not enjoy the company of his family; in other respects, he might be sometimes better off in a prison than outside prison. But the larger the number of luxuries and artificial requirements to which a man is accustomed, the greater is his hardship in prison when he can not get them there. To the man of strong sexuality, the deprivation of sexual enjoyment in prison-life, makes prison an object of strong aversion. Prison-life is repulsive to criminals who like a life of drink, dance and revelry.



§ 27. If "motive" means anything mental conscious or subconscious which moves the individual to commit a crime, there is always a motive for crime. But ordinarily in our search for a motive for a crime, we seek a cause which can be found in the conscious activity of the mind, which the individual can discover by introspection and retrospection. The capacity to read correctly the working of one's mind differs in different persons, and a person even by retrospection and introspection may take as motive of his behaviour something other than what it was.

SEC. 27.  
Motive for  
crime.

Crimes proceeding from entirely dissociated portions of one's mind as in epilepsy, hypnotism, insanity though possessing reason or ground or motive in the dissociated mind, can not be treated as crimes originating in motives in what is regarded as the true Personality of the Individual. The motive of crimes of a personality should be sought in the non-dissociated Personality—the normal healthy mind.

H. L. Adam in the story of Crime says:—"Whenever a man commits a crime, of whatever degree of gravity, for which no motive whatever can be found, it argues the existence of some mysterious mental disorder. It is certainly not the mental disorder which is generally regarded as insanity, for such prisoners as I have referred to above have been closely watched and examined by experts, who have failed to discover any of the symptoms which indicate the presence of ordinary insanity. \* \* \* It is a sudden calamitous visitation, during which the victim commits purposeless deeds: it is a wave of all-powerful emotion which holds captive the mind and impels the victim to extravagant, illogical and baleful acts. It is intermittent, transitory and during its prevalence, it obliterates all reasoning power, leaving in its train an aftermath of bewilderment and moral unconsciousness." This phenomenon described by Mr. H. L. Adam, should be regarded as result of dissociation in the organic unity of Personality.

"Motive" may be inferred from previous history and surrounding circumstances as proved by evidence and from the statement of the accused. No outsider can enter into the mind of the accused as it worked at the time of the commission of the offence save by an act of inference. But

the criminal may err in reading his own motive, and the circumstances may mislead.

W. Wills says:—"While true it is, that frequently imputation and strong circumstances...lead directly to the door of truth it is equally true that entirely to penetrate the mind of man, is out of human power, and the circumstances which apparently have presented powerful motives may never have acted as such."

Failure to discover circumstances from which a motive may be inferred, does not necessarily mean that there was no motive. We can never know the whole inner life of a personality together with the possible reactions of it upon the environmental circumstances. Nevertheless, in practical life, we are not concerned with abstract possibilities but with probabilities. The absence of anything in the environmental circumstances, as may cause a reaction, is certainly valuable evidence in favour of absence of motive. When some crime has been committed, the existence of a motive may be presumed unless the possibility of the existence of a motive is excluded not only by the absence of any possible circumstance which may lead to the crime but also by evidence about the mental condition which would go against the operation of an undetected possible motive.

William Wills Esq. in his "Essay on the Principles of Circumstantial Evidence" says:—"But it is the essence of moral weakness that it forms mistaken estimate of present good, and a want of proportion will, therefore, of necessity be found between the objects of desire and means employed to obtain them \* \* \* Indeed tried by the strict rules of morality, there can be no such thing as an adequate motive to the commission of crime."

Psychologically, every motive of however trifling value in public social estimate, which leads an individual to commit a crime, is a sufficient motive. Such a motive can be called inadequate only by reference to some common standard of judgment which regards that a profit of a certain standard of value can reasonably act as motive of a certain crime. This involves a vague reference partly to the ideal of conduct of a cold calculating rational criminal and partly to another ideal of conduct in which there is a proportion between the

value of the motive and the value of the crime, by a reflection of the rational standards of non-criminal conduct prevailing in the society.

§ 28. (1) The criminals by passion are persons of defective mental balance; they are often persons of nervous temperament and excessive sensibility and sometimes of an epileptic temperament.

SEC. 28.  
Criminal by  
passion.

(2) Their offences are mostly against persons.

(3) They are highly emotional before, during or after the crime which they mostly commit openly, and often by ill-chosen methods—the first that present themselves. Sometimes a criminal of passion premeditates a crime and carries it out treacherously.

(4) In many cases, they acknowledge their crime with unassumed remorse; in some cases, the remorse may impel to suicide. As prisoners, they are repentant.

§ 29. The environmental criminals are not the victims of their defective constitution like criminals by passion but they are victims of special environmental circumstances. No doubt crimes from passion also require the occasions for manifestation of crime and no doubt the cause of the crime is both in defective constitution and the occasion; but the defective constitution is the predominating element. The environmental criminal is a normal person by birth but is a victim of his environment. He is a person who is born with the normal mental constitution of a non-criminal but who is landed to crime by the very peculiar circumstances in which he is placed. The born criminal is one who in a normal good environment, develops as a criminal. The environmental criminal in a normal good environment would not grow up as a criminal.

SEC. 29.  
Environ-  
mental  
criminals.

The professional criminal may be a born criminal or an environmental criminal. In the same society, different individuals have different environments. Each individual has a station for him in the social body, which belongs to him only and to no other member. When the individual possesses the normal average mental constitution of other individuals occupying similar stations or positions in social life, but falls owing to some accidental strongly tempting circumstance in the environment of such a nature in which many similar



minds would have similarly tripped, the fall would be an environmental fall. But in the same social body, there may be different classes of environmental atmosphere. Persons possessing strong ruling and dominating instincts require an environment where these instincts can be legitimately satisfied without commission of any crime. In every society, there is room only for a limited number of such persons. Persons with such strong ruling instincts if born as kings or in families and circumstances, which lawfully lead them to ruling positions, would remain non-criminal. But one goaded with a strong ruling passion in a position of life from which he can not lawfully obtain ruling power, may become a criminal for securing his end.

The comfort, wealth and opulence of higher middle-class life can be enjoyed only by a limited number of persons in a society. Where persons struggling and thirsting for such positions are enormously larger than the number for whom there is room, it may happen, that in the keen competition, some may sometimes commit crimes to attain their ends.

A youth of very active adventurous bold nature thirsting for doing some bold exploit, may attain high fame if sent in a military expedition, but when confined by his environment to a dull peaceful life, may be tempted to acts of robbery committed in a sportsman-like spirit. Again, each seeks a profession for which he is suited, and if he can not get a lawful one suited to him, he may drift to an unlawful one suited to him. Disbanded and discharged life-long soldiers may turn robbers and dacoits, in the absence of lawful occupations befitting their whole previous modes of life. A gentleman's son brought up in gentleman's ways and habits of life, in the absence of any lawful gentleman's occupation for earning livelihood, when without any means of livelihood, may be easily tempted to commission of crime to maintain his position.

The adjustment of the impulses, emotions, desires, thirsts of individuals to social opportunities, partly by creating opportunities for gratification and exercise of impulses and partly by moral control and moral inhibition of all impulses and all desires for which there is no room for non-criminal gratification in the available environments, is the great problem

of social life ; and a proper practical solution of this problem is one of the best means for cure of crimes in every community.

§ 30. (1) *Solitary confinement* is deprivation of the individual from contact with other minds and nature around. The development of human mind takes place by living intercourse with man and nature. The man of whom only the animal remains and the higher mind has either not developed or has been killed off, if sedentary in disposition, will feel no misery in solitary confinement. Solitary confinement except for very short periods, always tends to deteriorate the mind. Any punishment deteriorating the human Personality can never be just. The highest end for Man is the Human Personality ; no means can be superior to the end. Where meditation and repentance can be produced by solitary confinement, a short period of such punishment may be sufficient.

SEC. 30.  
Some  
punishments

(2) *Solitary work* :—If persons are allowed free intercourse with nature around and heavens above, through their eyes, but kept separate from other criminals and made to work alone, they escape contagion from worse characters. But the compulsory deprivation of social life in many cases, affects the health of the mind. But cells without proper windows for seeing nature and heavens, are injurious to health of the human mind and should not be allowed.

(3) *Imprisonment* :—Restraining one's liberty of motion and liberty of enjoying society by confining in a prison, affects different persons in different ways. To some, imprisonment under our modern humane conditions, may be no punishment at all. The material comforts of our modern prison-life are better than the material comforts of many in India outside the prison-walls. The disgrace attached to imprisonment, is the cause of fear of prison in many minds. Ignorance of prison-life causes a fear of prison in many minds. Fear of the unknown is an instinct of man. It is better not to remove this fear of the prison as far as practicable.

To a young man newly married and deeply attached to his wife, prison means loss of company of wife, and may thus become an object of possible dread ; but an old widower will not have such a motive.

There are persons having a passion for moving about at different places, and there are others who won't feel at all if not

allowed outside the confines of the prison. What amount of imprisonment is necessary for each case, for creating a deterrent motive, can be properly determined from experience of results of previous sentences in each locality and for each class of prisoners. Proper Statistical compilations are necessary for such purpose.

Incorrigible criminals should have their liberty permanently restrained to protect society from their depredations.

(4) *Hard Labour*:—Hard Labour is the best discipline of those who can bear hard labour but whom indolence led to crime. Physical labour suited to the health of the criminal, is one of the best disciplines for fitting a man for regular occupation in life, and for developing self-control. Control of the muscles helps mental self-control

(5) *Whipping*:—In some natures, whipping operates as an excellent reforming and preventive agency. Its tendency, however, is to demoralise him who inflicts the same, and those who witness the same. But every punishment is per se bad; infliction of every punishment requires hardening of the human heart. The Judge while passing sentences of punishment, the officers carrying out sentences of punishment, have to harden their hearts for the time being. Slaughter of animals, tends to demoralise the butchers and those who witness the same. But slaughter of animals is allowed in society.

(6) *Capital punishment*:—There are persons who can be kept away from commission of murders, only by fear of capital punishment. On the other hand, there are persons who dread life-long punishment more than capital punishment. Capital punishment produces a demoralising effect upon the judge, the executioner, and the spectators. But war produces certainly a greater demoralising effect. A war in self-defence is always just; similarly when capital punishment is a necessity to prevent a greater number of murders, it should be tolerated. The murders of the deliberate murderers, are certainly more demoralising than the execution of the murderers under court's sentences. Whether capital punishment should be allowed by a country or not, depends upon the circumstances of each country and is a problem to be determined by Legislature for each country and each age.



Capital punishment may be just and necessary in one country while it may be unjust and unnecessary in another country.

(7) *Fine* :—In all crimes originating in love of gain, fine is one of the excellent punishments. The amount of fine should be regulated by the pecuniary position of the criminal, and the amount should be such as to work as an efficient preventive. In all offences against property, the criminal should be always compelled to give just and equitable compensation for the loss incurred; and where the criminal has no money, he should be compelled to earn the same by compulsory labour. Restitution of properties should be always enforced; and where the criminal has made over the property to a third party, he should not be discharged from prison so long he does not disclose the name and address of the receiver.

## CHAPTER XVII.

### THE PSYCHOLOGY OF ADMISSION, CONFESSION, ACCOMPLICE-EVIDENCE, AND OF BEHAVIOUR AS CIRCUMSTAN- TIAL EVIDENCE.

SEC. I.  
Admission  
and con-  
fession.

§ 1. A confession is "an admission made at any time by a person charged with a crime, stating or suggesting the inference, that he committed the crime."

The term "admission" in English law is ordinarily restricted to admissions in civil transactions and to such ones in criminal cases which do not amount to confessions. But under the Indian Evidence Act, the confessions are only a particular species of admissions, all confessions being admissions.

Facts may be admitted by a party not from his knowledge but from his information and belief.

Confession of guilt may contain also hearsay information. An accused may confess the crime of adultery on information and belief that the woman is a lawfully wedded wife of the complainant while she may not be so really.

Confession may involve an inference and a person may confess a crime not committed by him owing to mistake in inference. A person may die from poison self-administered before but if the death takes place while the person is being assaulted by another, the latter person may infer that the death was the result of his assault.

Every crime being the creation of law, in every finding of crime, there is a legal inference. A mistake may be committed relating to an inference of fact as well as an inference of law. An action may not amount to a crime in law but a crime may be confessed owing to a mistake in law.

Admissions may be expressed by any of the ways in which one person may communicate his mind to another person. Behaviour by which one's mental state is expressed may express the implied belief on which the behaviour is based. Language whether oral or written or by any sign when unambiguous, best expresses the admission. But when the admission is expressed by behaviour, the case is one of inference, of interpretation of circumstantial evidence, involving a greater risk of mistake.

Direct acknowledgments of guilt as well as inculpatory statements which suggest an inference of guilt, are confessions.

In determining truth, the courts rely upon admissions (whether confessions or other than confessions) on the presumption that a normal man will not make admissions prejudicial to his interest and safety unless urged by the motives of truth and conscience.

Admissions mislead courts from truth, so far they spring from a motive regardless of those of truth and conscience, and so far the belief and information on which admissions and confessions may be made, are unsound and incorrect.

Admissions (whether confessions or other than confessions) mislead either from a defect in the cognitive side of the mind or defect in the conative-affective side of the mind.

Admissions (including confessions) may be made before judges in the course of pleadings or otherwise, in the cases under trial or might have been made before and therefore requiring proof during trial.

When the admissions are proved during trial, the determination of the nature and extent of the admission is a question of judicial decision. When the admission is in writing, the production of the writing is desirable as a guarantee against a mistake.

But when the original admission was made orally, mistake may arise from any one or more of the following causes :—(1) defect in expression (2) defect in hearing the language used (3) defect in understanding the language used (4) defect in recollection (5) defect in expression of the recollection. In cases of inference the language actually used should be ascertained so far practicable. In the case of oral language, the hearers in most cases recollect what they took to be the



meaning of the language used rather than the exact linguistic expressions used.

In law courts, a confession is presumed to be voluntary unless the contrary is shown. It has been said that the ground upon which confessions are received is the presumption that no person will voluntarily make a statement which is against his interest unless it be true. Law courts assume that true confessions are voluntarily made by many confessors, against their own interest. This assumption involves the principle that many criminals against their own interest voluntarily make true confessions of their guilt.

SEC. 2.  
Sec. 24 I. E. A.

§ 2. Sec. 24 of the I. E. A. runs thus: "A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by an inducement, threat, or promise, having reference to the charge against the accused person, proceeding from a person in authority, and sufficient in the opinion of the court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature, in reference to the proceedings against him."

The operation of inducement, threat, or promise of a person in authority, upon the mind of the accused, depends upon the mental constitution of the accused, the condition of his mind at the time, the nature of his previous experience, and upon the surrounding circumstances. The individual element should not be ignored.

Sec. 28 of the I. E. A. says:—"If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise, has in the opinion of the court, been fully removed, it is relevant."

The effect of inducement, threat or promise may be removed by subsequent information communicated by some person of superior authority or by any other person. An inducement threat or promise may continue to operate for considerable time, and though lapse of time may remove them, it is a delicate matter for consideration in each particular case.

An explicit warning not to rely on any expected favour, if thoroughly understood and believed as a true statement will remove the effect of an inducement.

§ 3. No magistrate shall record any confession referred to in the section unless *upon questioning the person making it, he has reason to believe that it was made voluntarily*. He is required to certify that he believes that the confession was voluntarily made.

SEC. 3.  
Sec. 164 of  
Indian criminal  
Procedure  
code.

What is a voluntary confession? How by *questioning* the confessor, the magistrate can be satisfied that the confession is voluntary?

(1) A person may be driven by cross-examination to incriminate himself. Is such incriminatory statement voluntary?

(2) By leading questions put in a manner as to suggest strongly incriminatory answers, a person may be sometimes somewhat hypnotised and thus deprived of free volition.

(3) A magistrate by questioning the confessor may learn from him whether any inducement, threat or promise had been offered or not, may explain the consequences of a confession, may remove the effects of any possible threat, inducement or promise so far practicable and can ascertain whether the confessor feels that he is confessing of his free volition.

(3) But an accused may have been hypnotised before and suggestion for confession at post-hypnotic state may have been given. No magistrate can ever be sure that such hypnotic suggestion is not working.

(4) The influence of previous *moral or religious* persuasion in making a confession, can not take away the voluntary character of the confession.

(5) The magistrate should remove all persons so far practicable whose very presence may work as a force retarding the free motion of the confessor's volition. The confessor may confess falsely to avoid displeasing some person present who by the prestige of his position may naturally enjoy a control over the will of the confessor.

§ 4. Confessions are either true or false confessions. In every particular case, it is very valuable for determination of truth, if the motive for confession can be found out, why in the particular case the individual has confessed.

SEC. 4.  
Why do men  
voluntarily  
confess?

W. Wills says :—"The agonies of torture, the dread of their infliction, the hope of escaping the rigours of slavery or

the hardships of military service, a weariness of existence, self-delusion, the desire to shield a guilty relative or friend from the penalties of justice, the impulses of despair from the pressure of strong and apparently incontrovertible presumptions of guilt, the dread of unmerited punishment and disgrace, the hope of pardon—these and numerous other inducements have not unfrequently operated to produce unfounded confessions of guilt."

The fallen  
or the mis-  
taken better  
people  
(The repen-  
tants' con-  
fession).

(1) There are crimes done in a fit of passion or under extremely tempting circumstances against which the stable nature of the man rebels. Every impulse, every passion under favourable circumstances and when highly excited tends to bind down attention and thoughts in its own interest and to rule out contrary impulses and suggestions. After it had exhausted itself in action, contrary impulses, and suggestions of higher order wholly occupying the mind rush in many minds. We, thus, get the phenomenon of repentance. In repentance, a person condemns himself and in such a mood he would voluntarily make a confession. The instincts of anger, revenge, retribution, the defensive impulses to destroy or remove anything that molests or endangers us; the sexual instinct, may lead us to do acts which cause repentance afterwards. Crimes may be committed under the wrong belief that one is morally justified in committing them but repentance may come afterwards when they are seen to be not morally justifiable. An individual may think himself as a better agent than the State for punishing crime but may find himself mistaken in his decision in the particular case. All our impulses instincts, emotions, do not always become fully organised in one system, but individuals on some occasions may behave against the developing order of the whole system; such instances bring repentance.

Confessions referred to in the following passage of Justice Duthoit are those of the repentant better nature who had been temporary victims of passion. Justice Duthoit says:—"In the parts of India with which I am acquainted a man who has been guilty of culpable homicide not unfrequently gives in at once. He looks upon himself as the instrument of fate, and says of the victim of his malice or ungovernable rage 'his time had come.' He is for the moment in despair and glad to purchase immediate ease by making a confession."



(2) There are criminals who commit crimes which do not bring any real gain to them but in such a careless manner as to bring readily detection. These are committed by persons of weak intellect, weak foresight, weak will. These persons before men in authority exercising prestige readily confess. These weak-minded persons often act on the impulse of the moment ; they reflect little. Sometimes they confess because truth is to them spontaneous recollection, expression of which is not controlled for want of will-power and for want of sufficient prudence. Imprudent as they are in everything, they are imprudent equally in making confession against their own interest. Such persons may confess to avoid vexation of being present in Police investigation or any expected vexation of enquiry.

Weak-minded and Imbecile criminals (The imprudent confession).

(3) A voluntary confession may be made under the belief that it is impossible for him to escape detection and that a confession would secure a more lenient treatment of him. In every day life, society always feels leniently towards the fallen brother who confesses and expresses repentance.

Confession under the belief that it is the prudent course under the believed circumstances (The prudents' confession).

Where the trouble and cost of defence is more unpleasant than the sentence that might be imposed in case of confession there may be confession.

A confession of a lighter offence may be made when it is apprehended that further investigation may reveal a more serious offence or may raise charge of a more serious offence.

(4) Confession secured by the legitimate influence of mind upon mind.

(a) Influence by appeal to moral nature

(b) Influence by appeal to religious nature

(c) Influence of Prestige. A person may have a person or persons who enjoy such prestige over him, that the offender would not conceal the truth before the person enjoying the prestige.

(5) The confession may be made during a temporary disorganized state of the mind caused by Panic or by shock of the crime committed.

A criminal finding himself in the clutches of the law, may be overtaken by sudden violent panic in which he makes a confession and makes him over to the vengeance of the law,

Disorganization of the mind,

just as a panic-stricken animal may become helpless easy victim of another animal.

The crime after commission, may on recollection produce such a shock on the mind as to cause temporary disorganization. The criminal loses prudence and self-control and gives spontaneous expression to truth.

(6) Other-regarding voluntary confession.

A false confession may be made by one to save the real guilty out of love for the guilty or to save a family-reputation or family-honour.

A confession may be voluntarily made when it is feared that further investigation or trial may bring out guilt of accomplices whom the confessor wants to safe-guard.

(7) Confession arising from hallucinatory imaginary beliefs. In days of belief in witchcraft in Europe, many innocent women confessed commission of evils ascribed to witches.

(8) Voluntary confession as means for satisfaction of any impulse or emotion or end or purpose.

A person may make a confession voluntarily, if it satisfies any end desired by him.

As regards the murder of Captain Pigot of the Hermione Frigate, on separate occasions, more than six sailors voluntarily confessed to having struck the first blow at Captain Pigot though not one of them had seen Captain Pigot or had been in the ship.

(a) A person who had been an inmate of Jail for many years, to whom the prison-life seems like home-life, who finds himself a friendless helpless, homeless stranger out of prison may voluntarily confess to go back to prison.

(b) A person may confess for getting conviction of some accomplice or accomplices against whom he has some grievance and whom he likes to see punished

(c) A person may confess implicating some innocent person who is his enemy for getting him punished

(d) A person may confess implicating some innocent persons to safe-guard his accomplices by putting the prosecution on the wrong scent.

(e) A person may voluntarily but falsely confess commission of some capital crime when he desires him to be executed, owing to weariness of life,

(f) A dramatic bold crime may captivate imagination and rouse admiration and may lead some one to confess falsely for being looked upon by others as the author of the crime.

(g) A false confession may be made to divert the scent from real offender or offenders and from more serious crimes.

(h) Vanity (a morbid love of notoriety at any price.)

(g) *Collusive Confessions*:—A person may falsely confess commission of a crime, on being bribed, for the protection of the real criminal or on being bribed by some official who will be benefited by the confession and conviction.

(io) *Penitential confessions*:—A person of deeply susceptible moral sensibility may confess the crime of putting a person to death, when the person died from some cause for which the confessor thinks that he is to be morally blamed.

(II) *Confessions on tender* of pardon, may or may not be true.

The cool deliberative calculating criminals who commit crimes after cool deliberation and choice in the light of reason, in whose cases the crimes are the products of their stable permanent mental constitution, never voluntarily confess unless confession is useful to them in the cold light of their reason. Persons of adventurous and bold spirit may follow a profession of crime in a sportsmanlike spirit but such persons may confess on return of their higher nature. Real criminals possessing satanic acuteness of intelligence, strength of will, and satanic character never voluntarily confess.

§ 5. There are many persons who can't keep a secret but feel a thirst for communicating the same to some other person or persons. This tendency of the mind, explains why a true confession may be got from a criminal under a promise of secrecy when the criminal believes that the secrecy would be kept.

SEC 5.  
Promise of  
Secrecy and  
Deception.

If a criminal can be made to believe by deception a state of things under which in case of true existence, he may confess, confession may spring also from such deception.

§ 6. An effect of alcoholic drunkenness, is to take away the power of voluntary self-control. A criminal on removal of prudential self-control owing to drunkenness, may confess his guilt. But as such intoxication deranges the intellect also,

SEC. 6  
Alcoholic  
Drunken-  
ness



it would be dangerous to convict a person on such confession only. Confession obtained under drunkenness, may be safely used in investigation for finding out evidence for determination of truth.

SEC. 7.  
Approver.

§ 7. To secure the evidence of an accomplice by exempting him from punishment, is psychologically on the same footing as to secure the evidence of a witness by a bribe, though pardon is offered as a reward for truthfulness. The State can not accept the principle of bribe in the department of administration of justice ; the State acts on the principle of offering reward for virtuous conduct.

Section 337 of the Criminal Procedure Code says that in the case of any offence triable exclusively by the court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class enquiring into the offence, or with the sanction of the District Magistrate, any other Magistrate may, with a view of obtaining the evidence of any person **supposed** to have been directly or indirectly concerned in, or privy to, the offence under enquiry, tender a pardon to such person *on condition of his making a full and true disclosure* of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof."

Only on the supposition that a person is an accomplice, a tender of pardon may be made. The supposition alarms the supposed accomplice ; the tender of pardon comes as a relief ; the supposed accomplice may be an innocent person who under alarm of an impending charge against him, may endeavour to concoct a story and may try to palm it off, to secure his release. If all the other offenders can be convicted without securing the evidence of the approver, pardon to the accomplice is unnecessary. If the evidence of the approver is necessary for proving guilt of the other offenders, the finding that the approver has deposed truthfully depends partly upon that deposition itself. If the evidence of the approver helps discovery of evidence which strongly support the evidence of the approver and together with it go to prove the guilt of the other accused, then the evidence of the approver secures its self-vindication as honest and truthful deposition.

An approver while making a full and true disclosure of the whole of the circumstances within his knowledge relative to an offence, may shield one or more of his accomplices and may implicate innocent persons.

An approver while speaking truthfully in all other respects may understate his share in the crime.

Illustration (b) of section 114 of the Indian Evidence Act, says that the court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. This illustration gives a rule for judicial guidance. The provision in Section 133 I. E. A. that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice though securing unfettered judicial freedom, leaves untouched the full sweep of the regulative rule of proof which says that "a fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists."

The position of an approver deposing under tender of pardon is one thing; while the position of an accomplice deposing after his conviction in a separate trial against an accomplice is quite different. All accomplices can not be treated on the same footing. The nature of the offence, the position and character of the accomplice, the circumstances in which the accomplices make their statements should be considered.

§ 8. False confessions are real facts. A confession is a very strong suggestive force. The accused has given his own version of the case. The tendency of all is to try to fit all evidence with this confession. The strong prepossession created by the confession tends to obstruct a fair and impartial estimation of the evidence *independently* of the confession.

SEC. 8.  
Misleading  
effect of a  
false con-  
fession.

§ 9. Extra-judicial confessions come through lips of witnesses and may be misunderstood for the following grounds:—

SEC. 9.  
Extra Judi-  
cial con-  
fession.

- (1) Mendacity in the reports,
- (2) Misinterpretation of the language,
- (3) Incompleteness of the statement.

SEC. 10.  
The method  
of guilt-  
diagnosis by  
psychic  
associations.

§ 10. By a careful observation of *time-differences* between utterance of a word by the experimenter and the utterance of another word given by the person experimented upon, and by utterance of words connected with some crime under investigation, by the experimenter, an endeavour is made to infer the relation of the subject to the crime.

Hugo Munsterberg says :—"Suppose that both my subject and I have little electrical instruments between the lips, which, by the least movement of speaking, make or break an electric current passing through an electric clockwork whose index moves around a dial ten times in every second. One revolution of the index thus means the tenth part of a second, and as the whole dial is divided into one hundred parts, every division indicates the thousandth part of a second. My index stands quietly till I move my lips to make, for instance, the word "dog." In that moment the electric current causes the pointer to revolve. My subject, as soon as he heard the word, is to speak out as quickly as possible the first association which comes to his mind. He perhaps shouts "cat" and the movement of his lips breaks the current, stops the pointer, and thus allows me to read from the clockwork in thousandth parts of a second the time which passed between my speaking the word and his naming the association.—I may find out how long it takes if my subject does not associate anything but simply repeats the word I give him. If the mere repetition of the word "dog" takes him 325 thousandths of a second, while the bringing up of the word "cat" took 975 thousandths, I conclude that the difference of 650 thousandths was necessary for the process of associating "cat" and "dog." In this way during the last twenty years, there has developed an exact and subtle study of mental associations, and through such very careful observation of the time-difference between associations a deep insight has been won into the whole mental mechanism. The slightest changes of our psychical connections can be discovered and traced by these slight variations of time, which are, of course, entirely unnoticeable so long as no exact measurements are introduced" (on the witness stand 1909.)

J. H. Wigmore says ;—"On the continent, the new method appears to have met with a large, if not overwhelming, measure of hesitation, doubt, and opposition among jurists and even"



psychologists, in that the proposal of its practical use is regarded as quite premature at least."

(1) *Does this method indicate guilt?*

Mr J. H. Wigmore says:—"Is not the most that is claimed by its adherents this much, that they can diagnose whether the person knows about the facts? And that how he came to know them—whether as a guilty doer or a mere spectator or even a disinterested witness or a newspaper reader—cannot be discriminated."

(2) *Are its indications exact?*

Mr. J. H. Wigmore says:—"What I desire to note is the delightful adaptability of this method to a judge's whim, in allowing him to prove whatever he is hoping to prove"

§ 11. All presumptions about human behaviour depend upon the habits of individuals and groups of men, larger or smaller. The presumptions are possible only because the law of habit rules.

SEC. 11.  
Presump-  
tions about  
human  
Behaviour.

These presumptions also depend upon the tendencies of the conative nature of man.

Presumptions can be correctly made upon a correct knowledge of the mind of man.

§ 12. From declarations and acts inferences are made as to existence of an intention to commit a crime or as to existence of consciousness of commission of crime effected before.

SEC. 12.  
Declarations  
and acts.

(1) *Disposition or intention to commit crime* may be inferred from language used. But the disposition or intention may be temporary and may not lead to the crime. The language used may be intended merely to cause fear or may be mere emotional effusion. An impulse roused may exhaust its fury in mere expressions and may not at all lead to any crime.

From  
cause to  
effect.

Preparations for commission of an offence constitute behaviour to support a finding of guilty intent which is to be inferred. Possession of instruments or means of crime under suspicious circumstances falls within this category "preparations."

(2) *Behaviour subsequent leads to inference of previous commission of crime.*

From effect  
to cause.

Possession of fruits of crime soon after the commission of the offence falls under this class.

For inference of possession from existence in a house, the house should *be in the exclusive possession* of the accused.

Fruits of a plurality or of a series of thefts, possession of articles which from value or other circumstances is inconsistent with or unsuited to the station of the party, lead to inferences from effect to cause.

Sometimes it may not be possible to identify the property in possession of the accused as the very property stolen but from circumstances it may be inferred that the possession is a guilty possession.

(3) *Attempts to account for unexplained appearances of suspicion by false Representations*, are neither admissions nor confessions nor incriminatory statements, but they constitute behaviour in favour of a finding of guilt.

These appearances of suspicion may be related to the person or dress or behaviour.

But there may be cases in which the accused apprehensive that the true explanation would not be accepted may foolishly give a false explanation which he imagined would be accepted but what is detected to be false.

SEC. 13.  
Inference of  
guilt from  
expression of  
Mental  
Emotion.

§ 13. To infer guilt from expression of *mental emotion* is inference from non-voluntary behaviour.

(1) The emotion may appear in the course of cross-examination.

(2) The emotion may be inferred from concealment, disguise, flight.

But an innocent person may be overcome by fear and may have recourse to concealment, disguise and flight. In the course of cross-examination, he may apprehend that he may have given some incorrect answer by mistake, from which some inference or suspicion about guilt may be made.

There are persons who though innocent, on mere suspicion of possible evil befalling him, may become very nervous and overcome with fear.

Fear may be result of

(1) the consciousness of guilt

(2) the apprehension of undeserved disgrace and punishment.

(3) deficiency of moral courage.

"Prejudice is often epidemic, and there have been periods and occasions when public indignation has been so much and

so unjustly aroused, as reasonably to deter the boldest mind from voluntary submission to the ordeal of a trial. The consciousness that appearances have been suspicious, even where suspicion has been unwarrantable, has sometimes led to acts of conduct apparently incompatible with innocence and drawn down the unmerited infliction of the highest legal penalty" (Will's circumstantial evidence).

§ 14. The suppression, destruction fabrication and simulation of evidence constitute behaviour from which an inference as to the mental state may be made. The ordinary presumption is that the evidence suppressed or destroyed is adverse evidence in the opinion of the suppresser, or the destroyer. This conduct amounts to a sort of admission of existence of adverse evidence. But the conduct is the result of the opinion of the actor. It may be that the actor made a mistake in his opinion. The actor may further think how the evidence may be taken by some other person or persons. When the actor finds that the evidence is not adverse in his own opinion but may be treated as adverse by some other person, he may be led to suppress or destroy the evidence.

SEC. 14.  
The suppression, destruction, fabrication and simulation of evidence.

Sudden alarm under a sudden death, may induce a person to endeavour a sort of speedy disposal of the human body which renders it unavailable for medical examination. A person may die from self-administered poison; another innocent person living with him may apprehend that he may possibly become the victim of a charge of murder by poisoning. This may alarm him and may induce him to endeavour an overhasty cremation of the body.

Fabrication and simulation of evidence may be made to prove what is true when evidence required by a court for proof can not be had; fabrication and simulation of evidence may be made to prove what is untrue. In a murder case, innocent persons with an unhinged mind under alarm foolishly apprehending possible charge against them, may fabricate evidence of suicide.

A false plea of alibi may be attempted to be proved by false evidence by an innocent person under the impulse of fear of a possible conviction. The guilt of an accused should be proved independently by satisfactory evidence and it would be improper to make a finding of guilty merely from the failure of a plea of alibi.



## CHAPTR XVIII.

### LEGAL CONSCIOUSNESS, PSYCHOLOGY OF SOME CONCEPTS RELEVANT IN LAW.

#### SEC. I. Legal conscious- ness.

§ 1. In human society, certain general rules of conduct are enforced by social opinion. These general rules of conduct, may contain the rules of fashion, etiquette and good breeding, the religious rules and the rules of secular conduct whether ethical or legal. From the general undifferentiated mass of rules, the legal rules or laws become differentiated by the evolution of *legal consciousness*. *Legal consciousness is the psychological origin of all laws.*

From the psychological standpoint, *the essence of law is its actual recognition by the mind as law.* "Recognition as law" is the work of legal consciousness. A legal consciousness is as much a psychological fact, as moral consciousness, religious consciousness. It involves not only a cognitive tendency to recognise a rule as a law but a conative tendency to obey the same, though obedience may not follow in all cases. Laws which are recognised as laws by the social opinion are in the majority of cases spontaneously and automatically followed.

*The element of coercion* moral or physical though never entirely absent from legal consciousness, is not essential. The coercion which is moral, and is physical in the hands of the individual or individuals who are aggrieved or feel active sympathy with the aggrieved, becomes organised and specialised when an enforcing authority (state or church) develops and monopolises authority to coerce. In the ideal or philosophical concept of law, the coercion is one springing from one's inner consciousness, whatever may be the source of this authority metaphysical or otherwise.

Legal consciousness may differ according to *the extent of the application of law*. The end of law may be simply

(1) regulation of power over persons and things, or (2) it may include also regulation of religious beliefs, rites, ceremonies, observances or (3) it may include regulation of much wider spheres of human behaviour.

Legal consciousness may differ according to difference in the *seat of authority for the obligation*. The seat of authority may be in (1) the social opinion or (2) in a limb of the society e.g., the state or the church or partly in each or (3) in our inner consciousness whatever may be the ultimate metaphysical implications of the authority of that inner consciousness (4) or in supernatural power (5) or in some sacred books or person. The last two sources of authority deriving power from the attitude of the social mind, may be regarded from one aspect as cases of authority of social opinion.

According to the *non-moral narrow political or religious state concept of law*, the laws are those rules of secular and political conduct which are recognised and enforced directly or indirectly by the Predominant Sovereign authority whether as secular state or as church or as both. This non-moral narrow concept may be further circumscribed by confining laws only to those enforced by secular political sovereign authority. Blackstone calls law "to be a rule of civil conduct prescribed by the supreme power in the state." In modern political states, a law is law because the state directly or indirectly recognises it to be law and enforces the same. The state-recognition and state-coercion are requisite factors.

According to the *wider non-political social concept of Law*, a law is any general course of conduct which is *recognised and enforced* by the conscience of the society as law. *Recognition as law* by the society is the essence of law in this wider sense. The coercion may be exercised by the moral coercion of the community and the physical coercion of the parties or their friends and sympathisers who want to take revenge or to enforce reparation, restitution or compensation for the breach of the law.

Laws according to this social concept, are rules for healthy functioning of the social organism. Man is by his essence a social being. There are impulses that stir within him which can find satisfaction and fulfilment only in social life. The essential constitution of the Human mind makes each man a

social animal ; for carrying an healthy social life, obedience to certain rules of conduct becomes necessary. The laws as are enforced by social opinion, are not always a mere fraction of the moral rules. The social conscience may enforce not only what accords with the principles of justice, equity and good conscience but also what is customary. Customs might have non-moral or even criminal roots. Long existence may make observance of a custom as promoting the highest good and to the greatest extent satisfying the existing expectations. Dr. Paul Vinogradoff says :—" numberless aims foreign to the the ethical standard play a part in legislation and in legal evolution ; national interests, class influences, considerations of political efficiency and so forth." Laws recognised as Law by social opinion, may exist in some religious or secular code or book or codes or books and may be recognised by social beliefs as eternal and ruling the universe ; the social opinion may regard some sacred book as highest authority.

Under the *ideal or philosophical concept of law* the legal consciousness recognises as law some ideal philosophical principle or principles which are higher in authority to all existing laws and should control all existing laws. Law of nature, Law of equity, the principle of the greatest good of the greatest number, belong to this type of Legal consciousness. The existing constitution of the Social Mind—conscious or subconscious—always acts as a *control* over all sorts of law-making.

If the element of coercion be treated as essential to the concept of law, then the political state will be above law, for a state can not coerce itself. But if this element of coercion be not essential, a political state may be bound by the law made by it, though self-imposed. In this latter view, its constitutional law and its laws controlling its relationship to individual subjects, would be legally binding laws upon it.

*The legal consciousness of an individual* may take a non-moral political or religious state concept of law or a social concept of law or a philosophical concept of law or may recognise more than one. The particular nature of the legal consciousness of the individual depends upon the surrounding ideas, beliefs, institutions, education and other environmental



factors social or physical, which influence the individual mind, in the course of the growth of that consciousness.

According to the famous jurist Ihering, the end of law is delimitation of interests. According to Dr. Paul Vinogradoff, "the aim of law is to regulate the attribution and exercise of power over persons and things in social intercourse"; and according to him, "law may be defined as a set of rules imposed and enforced by a society with regard to the attribution and exercise of power over persons and things." For his own definition, Dr. Vinogradoff claims the following advantages. "It covers the case of primitive legal rules which had to be largely enforced by self-help, as well as that of the highly complex commonwealths of the present day which strive to provide complete systems of legal remedies and state sanctions. It embraces the working by bye-laws, customs and autonomous ordinances as well as that of the common law and of elaborate parliamentary enactments. It makes room for the binding force of constitutional and of International law. It takes account of criminal and of private law, of punishment and of nullity."

In a thoroughly healthy social organism, the laws imposed by the state, secular or religious or both, should harmonise with the social legal consciousness of the community and should work in harmony with the philosophical ideals of law prevailing in the community. Where there is any injurious defect in any philosophical ideal of law, the state and the society by proper and legitimate control of all the forces which shape such philosophical opinion should so correct it as to remove such injurious defect and to bring into current belief such ideals as work in harmony with the State-law and help its steady continuous peaceful progress and change according to requirements.

Legislation whether by a direct Legislative authority or by an indirect authority (judicial or non-judicial) should work in harmony with the social legal consciousness; where the latter requires correction and change, that should be done by legitimate means; and in that way, harmony should be secured between the state-law and the social legal consciousness.

The particular contents of Legal consciousness of each country and each age may differ; for study of the psychology

of the particular legal ideas of each age and each country, study of the history of these legal ideas is necessary. The study of the history of each legal system, must precede for a correct discovery of the mental reactions and mental factors, which played their parts in the course of the growth of the particular legal system. Of state-recognised law, a portion relates to laws necessary for protection of the existence and other interests of the state. These laws may be called political laws. Laws relating to revenue, army, treason, foreign affairs, are cases of political laws. The political laws partly or wholly, may or may not form, a part and parcel of the social legal consciousness.

SEC. 2.  
The psycho-  
logical origin  
of law.

§ 2. Non-political Law sprang from the very constitution of the Human mind.

(1) Every man has a judicial sense *i. e.*, he is a born judge.

(2) Human mind is controlled by the laws of habit imitation and mass-suggestion. Primitive law is to a large extent based on customs; with social progress, customs are displaced by religious or secular Codes, Legislation, Laws declared by Judges or declared by persons whose authority is respected.

Custom has been called "a law or right not written, which being established by long use and the consent of our-ancestors hath been and daily is put in practice"; "an unwritten law established by long usage and consent of our ancestors." In *Hurpursad V. Sheo* (3. I. A.), the Judicial Committee define custom as "a rule which in a particular family or in a particular district has from long usage obtained the force of law."

Customs of a society are the general ways of behaviour of that social organism. They constitute the functions of the social organism. Every normal average member of the society follows spontaneously and naturally the customs. The new-born members of the society as they grow up, uncritically learn and follow the customs through operation of the laws of imitation and mass suggestion, habit and through education. The rebels are either those who fall below or rise above the level of social life.

With the differentiation and growth of a separate limb of the social organism either as the state or the church or both which undertakes the task of enforcing obedience to laws, part or whole of the customs came to be laws according to the extent of enforcement by this separate enforcing Institution. The evolution of laws through customs is a process of natural spontaneous evolution of law. They may be subsequently embodied in religious codes or codes of secular legislature or may be recognised by the Judges in their decision, but these are merely secondary processes. The historical school led by Savigny attached the greatest importance to customs as a source of law. To them customs represent "the unsophisticated sense of the nation in regard to questions of right," as "the outward expression of latent principles which were sure to be more in keeping with the notions of justice ingrained in a given society than the artificial creations of statecraft or of scientific jurisprudence."

Custom merely means a course of behaviour which had been followed in the community uniformly from generation to generation. The continuity is kept up by operation of the laws of imitation and mass suggestion and of habit. The following indicate the ways of origin of customs :

(1) Every man is a born Judge. In early families and communities, necessarily various questions came up for decisions about nature and extent of powers over persons and things. The views of persons who were called upon to decide on questions of rights and duties when accepted and followed gradually developed into customs. These are cases of following judicial precedents, only the tribunals were not such *specialised bodies* as our present day judges are.

(2) Even in the absence of any dispute, definite views as to rights and duties gradually grew up in these families and communities; and these views being uniformly followed ripened into customs. The usages of daily life as to marriage, contract, powers over persons and things developed into customs.

(3) When any one of several possible ways of conduct could have been followed, the mere fact of following one course led to its repetition and gradually that course ripened into an usage and finally a custom.



(4) A course of conduct having been enforced by dint of brute force, or through superstition or any form of mental influence in the interest of an individual or individuals or according to humour of an individual or individuals, might have become also the origin of what subsequently became a custom.

(5) The Judge decides a dispute which has actually arisen, while the Legislator has to decide beforehand possible future cases. The Legislator has also to exercise the same Judicial capacity which a Judge exercises.

The Judges and the Legislators of primitive peoples were undifferentiated members of the people, whose decisions and whose views of rights and duties gave birth to popular usages which in time developed into customs. A Legislature of a modern state is only a differentiated specialised body for law-making.

(6) From laws of imitation, mass-suggestion, and habit, courses of conduct originating in chance selection, self-interest, or caprice of others, ripened into customs.

The customs were accepted in religious codes and secular codes and in decisions of the Judges. The religious Legislators, secular legislators, Judges, men learned in law and commentators also through exercise of their Judicial faculty or from influence of foreign learning added to the laws obtained from customs.

Many of the fundamental principles of common law may be traced to mediæval customs. Some of the principles of English common law originated from the Judicial sense of the Judges or from some doctrine suggested perhaps by foreign learning. Appeal to the principles of Justice, Equity and good conscience is an appeal to the sense of Justice of the Judges. Precedents supplied in foreign law or in foreign codes are sometimes followed as particular instances of application of the Principles of justice, Equity and good conscience.

The political laws *i.e.*, those intended for self-preservation and welfare of the sovereign portion of the state, have always origin in the sovereign and are laws in the strict Austinian sense. Laws relating to army, revenues, allegiance to the state and loyalty, control of powerful men and powerful

associations of men within the society who may abuse vast powers, control of government officers and state monopolies, fall under this class. The political laws existing for protection of existence and interests of the sovereign or the state, originated from the minds of the persons who made laws for the interest of the state. The purely state originated laws existing in the interest of the state, may partly or wholly through the length of their lives or through their reasonableness and equitable character, or both, may pass into the customs and to general social legal consciousness.

Religious rules and duties may partly or wholly come to be enforced as laws. The secular power of the church or the priests, may induce them to enforce religious duties and rules by secular coercion. When a people becomes deeply imbued with the reality of religious beliefs, it would support such a procedure ; and the state's authority may come to support religion by state coercion, when the ruling members are seized by such deep religious convictions. The decay of living faith in the traditional religion among large numbers, the spectacle of simultaneous existence of several religions side by side, the necessity of living in harmony among members of different faiths, considerations of expediency, the spread of learning and broad culture, operate in bringing about toleration, and removal of enforcement of religion by the sovereign's coercion.

The laws of nature, the eternal principles of what is just and proper, enunciated by philosophers, are accepted and acted upon by judges and lawyers only when they conform to their sense of Justice.

Dr. Paul Vinogradoff says :—

“ The contents of the law of nature vary with the ages, but their aim is constant, it is justice.”

The decisions from sense of Justice may vary with the ages but they all aim at Justice.

Dr. Paul Vinogradoff says :—“ It is not necessary now a days to be a socialist in order to feel that the existing systems of positive law, which have sprung into being under the influence of feudal conceptions and of theories of free contract, will have to be largely transformed in order to meet the requirements of the rising democracy. Schemes of reform and attempts at remedial legislation are being initiated every-

where ; and though it would be out of the question for us to review such schemes and attempts in detail, we may notice that their growth undoubtedly testifies to a change in the leading conceptions of law."

The Same Doctor says :—" There is another more modest contention, the admission of which, however, would undoubtedly strengthen the hands of partisans of reform. It is represented conspicuously by certain modern followers of Kant, headed by Stammler. Though granting that a law of nature as a set of perennial rules does not exist, they contend *that every age ought to have its own law of nature, or rather its own right-law by the side of its positive law*. That is, they maintain that rules of positive law have to justify their existence by reference to *standards set up by the philosophical doctrine of the age*. If laws are found wanting from this point of view, they ought to be corrected either by legislation or by judicial practice. Stammler's own attempt to formulate four standards by which "right-law" ought to be estimated can not be said to be successful. It is heavily dogmatic and leads to mere Scholasticism. But the main view that in an enlightened age positive law has to be estimated *by the standard of moral ideals* seems to be incontestable."

The ideal of what law ought to be in a certain age, dawns in the minds of advanced thinkers or in minds who from their peculiar experience become fit harbours of such ideals.

SEC. 3.  
Legal  
fictions.

§ 3. "Legal fictions" are inevitable sometimes for progress in law. Most people are slaves of habits and customs. To them, it is impossible to escape *the habitual and the customary modes of thinking*. To make something new, acceptable to them, the new should be made as a mere particular case of an old habitual or customary concept. From the very mental constitution of the majority of men, the new must appear masked as old and familiar, if the new is to be accepted by them. This psychological law is the justification of the use of legal fictions. But Judges and Lawyers when using legal fictions do not always do the same with full consciousness of their real nature. The subconscious mind works in the beginning in many cases, causes in them illusion that the new is old, to bring about harmony between the new and the old, and to secure the smooth working of the new. Sir Henry



Sumner Maine in speaking of Legal fictions remarks:—  
 “They satisfy the desire for improvement, which is not quite wanting, at the same time that they do not offend the superstitious disrelish for change which is always present.” By the use of a legal fiction, the law is shown as remaining unchanged while it has been really changed. These legal fictions were used in the English case-law and in the Roman *Responsa Prudentum*.

Every old idea in virtue of the conative and emotional elements stirred by it, is a power. A new idea may be powerless. It is only by incorporating a new case under an old power, that the benefit of the moving power of the old idea can be secured.

§ 4. Maine says:—“Nothing in law springs entirely from a sense of convenience. There are always certain ideas existing antecedently on which the sense of convenience works, and of which it can do no more than form some new combination.”

SEC. 4.  
Maine on  
sense of  
convenience

§ 5. Man did not create the earth or the natural objects to be found on earth. Man whether as an individual or as a family group or as a larger association of men was driven with progress in population and civilisation, to appropriate and occupy land or other natural objects, temporarily or permanently. To this appropriation and possession, human labour was sometimes added. The instincts of self-preservation and self-advancement and acquisitiveness led to exclusive appropriation which was maintained through the instinct of pugnacity. Appropriation with or without expenditure of human labour followed by exclusive possession for sometime (*i. e.*, prescription) developed under the laws of habit, a tendency in all to respect the settled order of things and a tendency to believe that to be the ordinary course of things. There is an instinct of acquisitiveness more or less developed in each man. This instinct strengthened by self-interest produced a tendency in each for preservation of existing order of things so far his acquisitions were concerned. The law of sympathy produced a tendency to allow others their acquisitions. All these currents operated upon by suggestion operating through large number of men and past time developed the idea of property.

SEC. 5.  
Conscious-  
ness of  
property.

The law of habit—the inertia of the human mind together with a vague perception of the good of maintaining the

existing order—working in all human minds through ages and echoing from heart to heart through sympathy, helped the evolution of the universal reverence of mankind for that which has for a long period *de facto* existed; in this reverence the fear of the unknown and novel mixes; the existence of an order of things through hoary past rouses our wonder; this wonder mixes with fear.

Long Existence of an order of things under which different persons enjoyed exclusive possession of different things joined with the reverence aforesaid for existing order of things, produced a tendency to believe that the institution of property was just and equitable.

Individual possession was maintained at first through self-interest and the acquisitive instinct aided by the instinct of pugnacity. The idea of Equity came afterwards to help. Juristic ideas about property when of indigenous growth were conditioned by the history of the people.

The conative-affective nature of man and the circumstances of population and environment, led to exclusive enjoyment of lands and things for long periods as properties. From enjoyment as properties, the lands and things came to be believed as properties; and this further led to the tendency to believe that everything ought to have an owner *i. e.*, every thing is property. The idea of property is thus the result of mental evolution depending upon social evolution.

The evolution of the idea that there ought to be the institution of private property (the form and not the particular matter in the form) whether belonging to an individual or a family or a horde or any other group, was conditioned by the bodily and mental constitution and requirements of man and by the objective conditions for satisfaction of those requirements and for harmony with that constitution.

The common elements in these conditions, led to the general consciousness that there ought to be an institution of private property. The divergent varying circumstances and particular histories of different portions of the human race, led to the divergent and different laws of property in different portions of the human race.

The harmonious fitting in of the institution of private property (considered generally and not relating to any particular

Historical form *i. e.*, as pure form separated from matter of any particular form) with the bodily and mental nature of Man as it is on this earth and with his present environment, and its present utility in possessing a tendency to promote the good of the Human Race, make the institution as one based on Equity, Justice, and Reason.

§ 6. These are general forms or categories of Human behaviour, of which the particular contents differ and are conditioned, (1) by the stage of evolution of the society and of the individual; (2) by the conative-affective-cognitive elements that enter in the evolution of the particular moral judgment; (3) by the organising principles that organise the conative-affective-cognitive elements into the order of what is just, equitable, right; (4) by the special nature of the environment. The organising principle or principles grow and develop; when fully developed they are new facts though their growth and development are conditioned by the physical and social environment playing upon the individuals. The ideals of what is just and equitable, of what is right, of what is good, are essentially organic in their nature. *The moral law is an organic system of relations showing the extent, scope and limits of the operation of each human conative tendency. Evil is good in the wrong place as dirt is matter in the wrong place.* Truth is conformity to the objective system of relations. A statement which is true in one relation may be false in another relation. Falsehood is truth in the wrong place. *As there is no unrelational absolutely true or absolutely false, similarly there is no unrelational absolutely just, absolutely right, absolutely equitable, absolutely good.*

SEC. 6.  
Just, Equitable, Right, Good.

§ 7. In every society, there grows up an Ideal of Prudence to which the man of ordinary prudence, the prudent and reasonable man, the reasonable man, the prudent man should conform, if these expressions are to be applicable to him. This ideal, refers to (1) the value of things sought after (2) the value of the probable chances of having or not having those things.

SEC. 7.  
A man of ordinary prudence, a reasonable man.

The "values" are objective values as belonging to the ideal. An individual according to his personal individual constitution may not accept these values for his personal use, but the objective social judgment supports and accepts these values



(1) This objective standard is the result of growth and has a definite history. It is not an artificial creation of mere abstraction.

(2) This objective standard for each group of persons is the same so far that group of persons have a *similar mental constitution* which responds and reacts similarly to the similar stimuli in the social environment or so far similarity in view is maintained through the operation of suggestion, sympathy and imitation.

(3) This objective standard of prudence may differ in different races, different nations, and in different classes in the same community.

(4) Like all social ideals, the ideal of prudence may change with intellectual, affectative, conational, moral and environmental changes in the body of persons to whom the Ideal of prudence belongs.

(5) The ideal of prudence has a certain area where the light is clear and there is no difference in its application; but there is also a large dimly lighted area where differences in the judgments of men of ordinary prudence may take place and where the same man of ordinary prudence may take different views on different occasions.

(6) The identity of this Ideal of Prudence is in the identity of the conditions which determine the life of a body of men and in the uniform operation of forces which maintain an identical belief.

(7) The different ideals of prudence in different bodies of men having divergent history and growth, tend to coalesce so far the conditions which determine their lives, tend to become similar and identical and so far circumstances help the evolution of a common opinion and continuity of that common opinion. The superior ideal of prudence of a predominant class may be assimilated by an inferior class, *intellectually*, though the affectative and conative life of the inferior class may take a longer time for living up to the Higher Ideal of prudence accepted.

(8) An ideal of prudence may be accepted by a community but the conditions necessary for intellectual assimilation of this Ideal by each individual of the group may not operate equally in each case, and this may cause a falling off from the common

meaning of the Ideal in the minds of a number of unfortunate individuals.

(9) A person may be successful in assimilating the Ideal of prudence of his community in one department of life while failing to assimilate the same in a different department of his life.

(10) The 'Ideal of prudence' is a living reality and not a mere abstraction of thought. It exists as a *coordinated and systematised system of intellectual, affectative and conative dispositions and tendencies* in the mental constitution of each man of prudence and reason of the particular community to which the Ideal belongs, and *these coordinated systematised systems of dispositions and tendencies* of individuals tend to become similar in each and all individuals of the same community, though that common tendency to assimilate the Ideal in the mental constitution of each individual, may not be equally successful in each and every case. This "common Ideal of Prudence" tends to shape each individual mind according to its form and shape in obtaining an intellectual acceptance, though it may fail to be successful in every case. Its unity is not in being an abstract creation of discrimination and assimilation *but in the unity of the creative process which under similar conditions, creates a society* having an individuality of its own. This unity of the creative process works in the individual mind in creating the coordinated, systematised system of intellectual affectative and conative dispositions and tendencies of that particular mind, having their unity in the Ideal of Prudence.

(11) This Ideal of Prudence being a living growing reality so long growth takes place cannot be fixed by definite boundaries at the period of growth and evolution of a community.

(12) The Judgment "that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists" impliedly refers to a *conative tendency* of the mind created under the circumstances. The cool deliberate contemplation of the circumstances with all their relations, gives birth to a conative tendency to act or not to act. This resultant tendency comes from the sub-conscious mind after full and careful deliberation by the conscious

mind. In every society, in the individual mind, though this *conative tendency* manifests in the subjective personal *consciousness*, it appears as the outcome of the working of an objective common ideal of prudence attaching objective values to things and the chances of their happening and not happening, and not as the product of purely personal individual likings and dislikings. The *conative tendency* on which the judgment is to be based is the conative tendency of the working of the social Ideal of prudence, the conative tendency of the affectative states of a social common consciousness. This social common consciousness of the social ideal of prudence, does not grow equally in all individuals; and so far the individual thus falls off from the social common Ideal, his judgment also suffers, and to that extent his judgment becomes the result of his individual personal nature.

SEC. 8.  
Cause, effect,  
consequences.

§ 8. The expression "cause" is used in various senses.

(1) Primarily as in popular consciousness, "cause" is what creates by exertion of energy as we do by exertion of energy in our actions. The idea has its origin in the feeling of strain, innervation, effort, exertion of energy, accompanying our muscular movements by which we act; the self thinks itself as a cause in making these movements. In this action of the human self upon other than self, this idea has its origin; it is an anthropomorphic conception. The human mind carries this concept into Nature.

(2) Aristotle mentions four sorts of causes which are four different things. (a) Formal cause (b) Material cause (c) Efficient cause (d) Final cause.

(3) This phenomenal universe is regulated by certain laws. Each law is sometimes called the cause of the particular phenomenon falling under the law. Under this meaning, search of cause of an incident is search of the law under which falls the incident.

(4) The "invariably antecedent phenomenon" is called also the cause of the phenomenon following.

(5) The whole phenomenal universe conceived as one organic living whole is in ceaseless motion. The whole of this universe as it exists at one moment may be called the cause of the universe as it exists in the next moment following.



(6) All the conditions for happening of a phenomenon may be called "the cause of the phenomenon"

(7) Nature is a living one whole. It is by isolation, that particular phenomena are distinguished. When cause of a particular phenomenon (change) is sought, of all the conditions necessary for the happening of the particular phenomenon, some are ignored, and one or more are assigned as cause or causes according to *our end or purpose* for the time being.

(8) Nature is a system of *objective relations*. Any of these relations may be the ground for the inference from the existence of one phenomenon to the existence of another phenomenon. Each of such relations may be called a *causal relation*.

(9) In Human conduct controlled by an End or Purpose, in evolution of all vegetables and animals as controlled by the type of each species and in social phenomenon, the controlling End or Purpose or type to which a phenomenon leads, may be called a "cause."

When lawyers use the word "cause," the correct procedure is to find out from the context, in what sense the word "cause" has been used. Man is naturally very partial to the conception of "cause" which has origin in his personal experience of efficiency. The human feeling that has gathered round this word "cause" is very valuable for the life of actual action, if by using this term in a different meaning, the help of this feeling can be had for actual action. Law is the department of action. The spring of action is in affectative and conative nature of man. The lawyer should not be deprived of his means of influencing human conduct by using the term "cause" in a different sense from that of mere efficiency, if the people consent to such usage and can be moved by such usage.

There are words which from associations clinging round them are great motor forces. A "word" which is the source of great energy, may gradually pass to have different meanings when masses consent to such usage, for utilising the great force inherent in such words; this expansion of a powerful word to different meanings takes place *ordinarily by a sub-conscious process*. There are terms which rule the masses.

Unless the "mass mind" be advanced enough to accept the rule of other appropriate terms it is not always safe in the practical field, to dethrone an old reigning term.

Effects,  
consequences

As all the conditions of the happening of a phenomenon may be called "cause," similarly all the effects resulting from a phenomenon, may be called its *effects*.

In practical life, some of the aforesaid effects may be ignored and attention may be confined to one or more effects according to the end or purpose of the moment.

The "consequences" of a certain human conduct are its effects, but in practical life for fixing moral or legal liability, only some of the consequences may be treated as the consequences and others may be ignored. Similarly for fixing moral or legal liability, some of the conditions of an Effect may be ignored and only some may be treated as causes of the effect. This exclusion of some of the "causes" or of some of the "consequences, and confining of causality to some of the conditions or confining of "consequences" to some of the effects, are controlled by the existing *objective moral or legal standards or ideals* accepted and acted upon for the time being. Such ideals have a definite fixed portion and a debateable fringe area; in this fringe area, (a) differences of judgment take place, (b) the same person may give different judgments on different occasions. Change in the ideal takes place by conative, affectative and intellectual changes of the social mind.

These "legal" and "moral" ideals undergo also change in its fixed portion in the course of change of ideals.

One can only look to *existing law as it is* for finding out these limits and boundaries for exclusion of cause and effect, and for inclusion of cause and effect, when the question is simply one of administering existing law.

"Cause" in  
Human  
conduct

In Human conduct, one of the following may be referred to as "*cause*": (a) the self (b) its motive (c) its desire (d) its impulse that comes from sub-conscious (e) its intention (f) its feeling (g) the end or purpose of its action (h) the muscular motor activity (i) the choice by the self (j) any one or more of the objective circumstances under which the self acts (k) any condition of the body (l) any condition of the mind, (m) any instrument or means used in the action.

§ 9. I. P. C. says:—"Whoever does any thing with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly." SEC. 9.  
"Dis-  
honestly."  
 "Wrongful gain is gain by unlawful means of property to which the person gaining it is not legally entitled. Wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled." "A person is said to gain wrongfully when such person retains wrongfully as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property as well as when such person is wrongfully deprived of property."

"Doing of anything" in this definition includes illegal omission to do anything.

"Dishonesty" of this definition is not any sort of moral turpitude; it relates to human behaviour *relating to property* which should conform itself to legal title.

(1) There should be absence of belief in good faith, in his own title to the property dealt with.

(2) There should be actual absence of title to the property dealt with.

(3) Acquisition or deprivation, retention or being kept out of property, shall be by *unlawful means*.

(4) There is no dishonesty where there is a bonafide dispute about title; or where the change of possession and retention on being kept out of possession are lawful.

(5) Our direct doings are our bodily movements. For realisation of an end, a movement or movements of body may be necessary, which give rise to other consequences which are outside the end or purpose sought to be realised. The end the means used as well as the consequences which are like by-products, are intended things though only the end is desired and the by-product consequences and the means may not be desired. There would be legal intention, relating to the by-product consequences (1) when the actor knows or believes that the by-product consequences would follow. (2) The rule that when a person in the actor's position and circumstances would ordinarily know or believe that the by-product consequences would follow in the natural course of things, the



actor intends the consequences, is only a rule of presumption for inferring the state of mind of the actor.

The actor can know or believe, only by an inference whether his act would cause wrongful gain to one person or wrongful loss to another person. This inference or judgment may be a proposition of any degree from probability from what is called certainty to mere remote contingency. Where "Negligence" or "Heedlessness" or "Rashness" is found to exist, which gives rise to wrongful gain or wrongful loss, there can not be "intention" to cause wrongful gain or wrongful loss.

Mr. Austin says :—"The states of mind which are styled *Negligence* and *Heedlessness* are precisely alike. In either case, the party is inadvertent. In the first case, he *does not an act* which he was bound to do, because he adverts not to it. In the second case he *does an act* from which he was bound to forbear, because he adverts not to certain of its probable consequences. Absence of a thought which one's duty would naturally suggest, is the main ingredient in each case. The party who is guilty of *Temerity* or *Rashness*, like the party who is guilty of heedlessness, does an act and breaks a positive duty. But the party who is guilty of heedlessness, thinks not of the probable mischief. The party who is guilty of *Rashness* thinks of the probable mischief; but, in consequence of a mis-supposition begotten by insufficient advertence he assumes that the mischief will not ensue in the given instance or case."

Mr. Austin says :—"By the Roman lawyers *Rashness*, *Heedlessness* or *Negligence* is in certain cases, considered equivalent to "dolus," that is to say, intention. \* \* \* \* Their meaning (I believe) was this :—Judging from the conduct of the party, it is impossible to determine whether he intended or whether he was negligent, heedless or rash. And, such being the case, it shall be *presumed* that he *intended*, and his liability shall be adjusted accordingly, provided *that the question arises in a civil action*. If the question had arisen *in the course of a criminal proceeding*, then, the presumption would have gone in favour of the party and not against him. \* \* \* \* Intention (it seems to me) is a precise state of the mind and cannot coalesce or commingle with a different state

of the mind. To *intend* is to believe that a given act will follow a given volition or act or that there is a chance of its following his volition or act. *Intention*, therefore, is a state of consciousness. \* \* \* \* now either the acting party thinks or does not think of the act or consequences. And if he thinks of the consequence, he either regards or he does not regard it as probable. If he thinks of the act and consequence and regards the consequence as probable, he intends. If otherwise, he is negligent, heedless or rash."

In theft, there should be *intention to take dishonestly*; in extortion, the victim should be *dishonestly induced to deliver* and should be *intentionally* put in fear of any injury to him or to any other person; in criminal misappropriation, the misappropriation or conversion should be a *dishonest* one; in criminal breach of trust, *dishonesty* is also necessary; in the offences of receiving stolen property, the receipt or retention of the stolen property should be a dishonest one.

The explanation to the definition of cheating in I. P. C., says that a dishonest concealment of facts is a deception within the meaning of this section. Such concealment shall be with the intention to cause wrongful gain to one person or wrongful loss to another person. Such concealment must be an unlawful one *i. e.* contrary to a course of conduct which law enjoins. Where the circumstances would make the principle of justice equity and good conscience applicable as a principle of law, the course of a conduct would be one dictated by law.

§ 10. I. P. C. says:—"A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

SEC. 10  
"Fraudulently."

According to Le Blanc J. in Haycraft V Creasy, "by fraud is meant an intention to deceive, whether it be from any expectation of advantage to the party himself or from ill-will towards the other, is immaterial."

Fraud is not mere illegality. In ordinary use, it means something dishonest and morally wrong.

In the definition of making of a false document in section 464. I. P. C., the act is to take place either *dishonestly or fraudulently*.

Falsification of public records to screen oneself from punishment, to alter the date of a document which was too late to be registered so as to make it appear that it was in time, to fabricate a sunnud giving a title of dignity, to induce a settlement officer to recognize title to that dignity, to fabricate a head master's certificate to enable a person to be admitted to an examination are acts done, not dishonestly as defined in the I. P. C.

"To defraud" may be the desired end or purpose of an act or may be the undesired but necessary means for realisation of a desired end or purpose. If "intent to defraud" be said to be absent when the *fraud* is in the means and not in the end, then the aforesaid cases of conduct would not be cases done "fraudulently."

Under the Indian Contract Act, Fraud means and includes any of the following acts committed by a party to an agreement or with his connivance or by his agent with *intent to deceive* another party thereto or his agent, or to induce him to enter into the agreement :—(1) The suggestion, as a fact of that which is not true, by one who does not believe it to be true ; (2) the active concealment of a fact by one having knowledge or belief of the fact ; (3) a promise made without any intention of performing it ; (4) any other act fitted to deceive (5) any such act or omission as the law specially declares to be fraudulent. Mere silence as to facts likely to affect the willingness of a person to enter into an agreement is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

"Constructive Fraud" is a legal concept, meaning an inference of Legal Fraud under certain circumstances, which inference may be disproved by contrary evidence. It is fraud in the view of a Court of Equity ; it is neither fraudulent misrepresentation nor fraudulent concealment. It is not psychological fraud. The act is interpreted to be fraudulent under certain circumstances : (1) an abuse of fiduciary relations (2) an act contrary to the policy of the law or to general public policy (marriage brokerage contracts) (3) the act produces effects that are unconscionable either as regards the party immediately affected by the fraud or some third party.



§ 11. The I. P. C. says :—"A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which at the time of employing those means, he knew or had reason to believe to be likely to cause it." The effect of this definition is to make all consequences of a person's act, *whether actually desired or not*, which the actor knew or had reason to believe as consequences of his act, to be his *voluntary acts*.

SEC. 11.  
"Volun-  
tarily."

Premeditation is not necessary for an act becoming voluntary. The condition of mind required for an act becoming a voluntary act, may exist even when a person acts in the heat of a passion.

Under the Indian Penal code, when a person's act produces hurt to any person, it would be "voluntarily causing hurt" in the absence of an intention to cause hurt, if the actor had knowledge *that he would likely thereby cause hurt*.

§. 12. Every malicious act is not malignant; but every malignant act is malicious. Malice in its legal sense, finds expression in a wrongful act done intentionally without just cause or excuse; in the legal sense, it is not a mere expression of hatred and ill-will to an individual, but consists in a conscious violation of law to the prejudice of another. Some acts in law are always malicious without any proof being given of personal ill-will or ill-feeling. Personal Malice in fact is a mental condition of enmity against an individual. General Malice in fact is a general disregard of the right consideration due to all mankind. "Malignantly" implies extreme malevolence or enmity, a general disposition to do harm, in the mind of the person who perpetrates the act to which the term is applied.

SEC. 12.  
"Malig-  
nantly."

§. 13. The Indian Penal Code says :—"Nothing is said to be done or believed in good faith, which is done or believed without due care and attention."

SEC. 13.  
"Good-  
Faith."

This "good faith" is not individual personal psychological good faith but represents a certain ideal to which the human mind shall conform. A person acting in a careless and inattentive manner may honestly take his belief or action proper and legal which a person acting with due care and attention will regard improper and illegal. The standard of "due care and attention" is a common social standard, a

standard required by the general community; but such a common standard possesses a wide fringe in which the individuals differ in their judgments.

Persons differ in their capacity to attend; in their past experiences and recollection of those experiences; in their capacity to apply the previous experience to a present occasion. The same person has different degrees of attention and different degrees of capacity to apply past experience to a present occasion and divergent past experiences relating to different matters.

"Care and attention" which can be brought into play for securing correct beliefs and lawful actions in everyday life, differ not only in different individuals, but differ in the same individual relating to different matters. Nevertheless, in the life of communities a regulating common ideal of "due care and caution" tends to develop, though this ideal has a very wide fringe in which the individuals differ. This common ideal does not ignore differences in the individual capacities to exercise "due care and attention."

The circumstances and occasion when belief or action takes place, should be considered.

A deeper knowledge of the nature and operation of the Human Mind will enable one to determine justly and rationally whether there was due care and attention in a particular case. Ignorance about the nature and operation of the Human Mind may lead a Judge to require everywhere what is "due care and attention" in his own personal case in his cool reflection in his arm-chair contemplation, away from the real life of action. The study of psychology leads to the conclusion that the standard of "due care and attention" that should be applied, should be always one which prevails among the social group to which the accused and the person who is subject of the crime, belong.

SEC. 14.  
"Reason to  
believe."

§ 14. The I. P. C. says:—"A person is said to have reason to believe a thing if he has *sufficient cause to believe that thing*, but not otherwise."

Determination of "sufficient cause" is a judgment. Every judgment is a judgment of a personal individual mind; different persons may agree or differ in their judgments under the same circumstances.

Section 411 I. P. C. runs thus :—" Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe, the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both."

Cases may occur in which judges will differ in their opinion about sufficiency of the circumstances to induce a belief of certain property being stolen; similarly there might be cases in which the accused found no sufficient ground to believe a property to be stolen whereas the Judge would hold that there was sufficient ground for believing the property to be stolen.

The belief is the conclusion that arises spontaneously and automatically from certain reason or reasons; any and every spontaneous automatic belief arising from any ground or grounds, would not do. The Indian Penal Code requires that the ground for the belief should be sufficient. What is the test of this "sufficiency?" The test is in the Judge's mind; what one judge thinks to be sufficient ground, another Judge may think as insufficient. From previous experience knowledge and information, the Judge obtains his standard of sufficiency. The conative-affective disposition of the Judge also enters in the evolution of consciousness of sufficiency.

In the mind of the accused, the impulse to have a thing, sub consciously affects his belief; and when the impulse to have the thing is a strong one, it may disturb his judgment subconsciously and may in some case or cases produce in his mind a conscious honest belief that the property is not a stolen one even when there is sufficient ground for believing the property to be a stolen one.

Section 269 I. P. C. says :—" Whoever unlawfully or negligently does any act *which is, and which he knows or has reason to believe to be*, likely to spread the infection of any disease dangerous to life, shall be punished....."

About laws of health and disease, many beliefs are entertained uncritically and mechanically as belonging to current beliefs; there are beliefs in which experts differ. In cases under Section 269 I. P. C. a question may arise in some cases, what is sufficient cause for believing the existence of certain alleged law of infection.



SEC. 15.  
"Consent."

§ 15. "*Consent*" which can affect legal relations, presupposes a mental capacity to estimate the consequences of an act of consent and a freedom to exercise the consent on the basis of that estimate. But this freedom of intellect and will is necessary only so far as required by law as it exists.

Consent implies an agreement upon the same thing in the same sense. Under the Indian Contract Act, consent is said to be free when it is not caused by (1) Coercion, or (2) Undue Influence, or (3) Fraud, or (4) Mistake, or (5) Misrepresentation. Fraud, Misrepresentation, Mistake take away the capacity to estimate correctly the consequences of consent. Coercion and undue influence enslave the will and disturb its freedom. In a civil contract, a minor can not consent.

Under Section 90 of the I. P. C., a consent is not such a consent as is intended by any section of the Code if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such a fear or misconception. Or, if the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age. Under the I. P. C., the word "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation or property. Coercion of the Indian Contract Act is the committing or threatening to commit any act forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain any property, to the prejudice of *any person* whatever, with the intention of causing any person to enter into an agreement.

Undue influence does not vitiate consent of the Indian Penal Code.

SEC. 16.  
"Slight  
harm."

§ 16. Section 95 of the I.P.C. runs thus: "Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, *if that harm is so slight that no person of ordinary sense and temper would complain of such harm.*" "Slightness" of a harm, depends upon the conative-affective disposition of the person affected by the harm; it depends upon the value

attached to the harm under the circumstances by the person affected. Every question of personal valuation is a question of judgment determined by the way in which his feeling side and conative side of his mind is affected.

This valuation becomes the same among a number of persons so far they have similar conative affective disposition. Among a social group subject to similar environmental influences and a common mind, these judgments would tend to be similar; the person of ordinary sense and temper is one conforming to this common type; certainly in the community, there may be individuals who do not conform to the common type and may feel offended at slight harm, but these latter are to be excluded from the class—person of ordinary sense and temper.

The cases where the harm is felt as unworthy of being complained of, may be described as cases of a sort of implied common consent and can be best determined by observing the courses of actual conduct prevailing within the community.

"Slight" can be measured only by the feeling of valuation of the person affected; "the person of ordinary sense and temper" can be only the person of ordinary sense and temper of the community to which the person affected belongs.

§ 17. In Section 100 of the I. P. C., we find the following: SEC. 17.  
Reasonable  
apprehen-  
sion.  
"The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—First, such an assault may *reasonably cause the apprehension* that death will otherwise be the consequence of such assault. Secondly, such an assault as *may reasonably cause the apprehension* that grievous hurt will otherwise be the consequence of such assault....."

In Section 105 I. P. C., it has been said that the right of private defence of property commences when *reasonable apprehension* of danger to the property commences.

This "reasonable apprehension" has a regulative *standard*. How is this standard of apprehension justified and allowed by Reason, to be determined? The Judge's mind uses this standard in concrete cases. What is this "Reason?"



The apprehension is emotion plus an impulse to motor activity accompanying the mental expectation of an occurrence, that is, a mental state having an emotional aspect, a thought-process of judgment and an impulse to motor activity. The impulse to motor activity may strongly affect the non-voluntary muscular system internal and external and may leave very little or nothing for voluntary muscular activity; or there may be both nonvoluntary and voluntary muscular activities.

The thought-process of judgment about the expected occurrence such as death will otherwise be the consequence of such assault or that grievous hurt will otherwise be the consequence of such assault, is required to be controlled by "*Reason*." The inference about the future happening is to be a rational one *i.e.*, one justified by ordinary human experience.

The person who is called upon to exercise the right of private defence, might not have been ever in similar circumstances or might not have seen any body in similar circumstances. He might or might not have heard as to how assailants behave in such circumstances.

Fear is an innate instinct for self-defence of the individual and under it, the voluntary motor system when moved, often tends to move with the rapidity of lightning when immediate action is necessary; on an occasion like this, the time for cool deliberation is not available at all. Reason or the result of experience of the Human Race, must act on the occasion with automatic rapidity of an intuition; ordinarily it is the sub-conscious mind that works on such occasions and evolves the judgment. The apprehension becomes reasonable on such an occasion only when the sub-conscious mind operates loyally to Reason. The Judge's Reason in his chair in the court room, in cool deliberation will give one judgment and the Reason of the person exercising the right of Private defence on sudden emergency in the excitement of life, under the emotion of fear and the powerful impulse of self-protection, may give a different judgment. The self-protection of body in most cases tends to cause a greater defensive reaction than self-protection of property.



to excite *feelings of disaffection to the government established by law in British India*, shall be punished with transportation for life, or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation—Such a *disapprobation of the measures of the government as is compatible with a disposition to render obedience to the lawful authority of the government and to support the lawful authority of the government against unlawful attempts to subvert or resist that authority* is not disaffection. Therefore, the making of comments on the measures of the government, with the intention of exciting only this species of disapprobation, is not an offence within this clause."

This section of the Indian Penal Code endeavours to secure loyalty of the will while allowing disloyalty of the judgment. Free criticism of the measures of the government is a great safeguard for securing measures promoting the greatest good of the community; while the loyalty of the will to obey and support the government is the essential condition of its very existence. For self-preservation of the government and to prevent its death, the most faithful loyalty of will is essential; while for securing *its efficiency for promoting public good*, freedom of criticism which means disloyalty of judgment should be allowed.

But in Human Mind, judgment and will, intellection and conation, can not be separated. In the individual Human Mind the will follows the judgment while judgment is influenced by will also. The ordinary tendency of rebellion of judgment in each human mind is to create a rebellion of the will. Again when there is rebellion of the will, it may prejudice judgment and may lead to unfair disapprobation of any measure of the Government.

The judgment and the will of the subject can be made to support and strengthen existence of the Government and to secure its highest and greatest efficiency in advancing public good, by developing in the mind of each subject a deep and abiding spirit of constitutional loyalty which merges and sacrifices the individual will to the Government will but keeps the light of individual judgment always wide awake and ready

to speak out. The Government is the most efficient and the highest Institution for securing public good ; Blessed are the people who possess the true spirit of constitutional loyalty which brings reforms in the course of natural and needful adaptation but saves the people from anarchy, violent revolution, civil war and the dreadful miseries incident to them. It is a problem of Legislation as to what extent and in what way criticism of the measures of the Government should be allowed in particular circumstances, without hazarding the safety of the state. This would depend upon the nature and extent of the growth of the spirit of constitutional loyalty among the community. The greater, the deeper, the wider, the loyalty of the will to laws, measures, orders of the Government and to defend its existence, the greater expansion will the liberty of criticism bear without endangering the safety of the state. Having regard to the laws of the Human Mind, the scientific procedure would be never to allow the sovereign state to be criticised considered generally and as an unifying organising personality. All the influences that operate in a community in developing particular mental attitudes, should be controlled by the Government to develop deep and abiding reverence and obedience for the sovereign state considered generally. In criticism of the measures of the Government, the officials or the Legislators who are personally responsible for the measures, and are the authors of the measures, may be allowed to be criticised relating to the particular measures and so far those measures are concerned. The special and particular organisations and institutions through which the Government carries on Legislative, Judicial, and Executive administrations may be allowed to be criticised for introduction of superior organisations and institutions for better stability and efficiency of the state.

Section 124 A I. P. C., allows disapprobation of the measures of the Government by a person who possesses a loyal will. How is it to be determined whether the critic possesses a loyal will? This is to be inferred from the nature and language of the criticism. It should be determined whether the criticism can come from a loyal will. But the meaning of the language is to be obtained from the context and the audience to whom the language is addressed. The

speaker or writer is responsible for the meaning which the hearers or the readers would give to his language, the conative-affective changes which the language would cause in the minds of the hearers and the readers. Language which under one state of things would not produce disaffection, would under an altered state of things, produce disaffection. But from the fact that the language of a speaker or a writer produces disaffection under a certain state of things, it does not always follow that the writer or the speaker intended to excite disaffection; there might be exceptional cases when he might have been indiscrete in the use of language. A psychologist would say that the accused writer or speaker should be allowed liberty to prove his innocence even when his language, in the minds of the hearers or the readers, produces disaffection.

A disloyal will tends to cause perversion of judgment. From the grossly unfair and grossly unreasonable criticism of a measure of the Government, under proper circumstances, a disloyal will, an intention to excite disaffection may be inferred. But as some people may learn to use language of vulgar abuse, so a writer or a speaker without any intention to excite disaffection, from his habit of using strong unjustifiable language may expose him to a charge under section 124A.



## CHAPTER XIX.

### MISCELLANEOUS.

SEC. I.  
The plain-  
tiff's mind.

§ 1. The plaintiffs may be divided into the following classes :—

(1) The plaintiffs who have bonafide belief in the justness of their claims.

(2) The plaintiffs who use the process of law for harassing and injuring somebody or for making improper gain.

In the 1st class, belong those of whom the machinery of litigation is a part of their regular business, such as landlords, money-lenders, traders who sell on credit, and persons having large business, who are compelled regularly to bring a certain number of suits to realise amounts due to them ; and in this first class, also belong those bonafide litigants to whom litigation is an accident or comes from time to time.

The bonafide belief in the justness of one's claim is a subjective personal belief. This subjective belief may agree or may not agree with objective truth. When agreeing with objective truth, a plaintiff may fail owing to insufficient evidence or owing to failure of the judge to find out the objective truth or owing to the strength of false evidence on the defence side which produces belief in the judge. When a plaintiff loses a claim which is objectively just, his bitterness at failure of justice after the bitterness of the troubles of litigation, may become very great. He may feel personal hatred for the Judge who decided his case against objective truth and in such a mood, may entertain any sort of baseless uncharitable belief against the judge. It is, therefore, pure commensense for Judges to behave and deal with the case in such a way as to produce an impression in the plaintiff's mind that the Judge was impartial and paid every attention to find out truth, and that the Judge's failure was the result of fallibility of human understanding.

Where the plaintiff's case is objectively false and unjust, he may in spite of his defeat, may stick to his subjective personal belief in the justness of his claim. Impartial Judges take different views of the same case on the same materials; it is not at all unnatural that the interested plaintiff who took considerable trouble for winning a case which he believed, may stick in many cases to his old subjective belief in spite of an adverse decision against him. The court can never know without hearing the whole evidence who is a criminal-plaintiff or who is an innocent aggrieved plaintiff; this is the strength of the criminal-plaintiff.

As regards the plaintiff's subjective belief in the justness of his claim, it may be based on facts of his direct personal experience, in which case if he mistakes, the mistake is one of inference; or the belief may be based on hearsay information or partly on hearsay information and partly on personal knowledge. As regards his belief in hearsay information, it is produced in the ordinary ways in which beliefs are ordinarily produced. The information may be wrong.

A strong instinct of pugnacity is at the root of many suits; even in case of legitimate grievances; where this instinct is very weak, there may not be any suit in many cases, and compromises out of court may be effected in many other cases. The troubles of litigants in many cases are not trifling, and only a strong instinct of pugnacity can carry many persons to bear patiently the many troubles of litigation. There are many plaintiffs whose beliefs are those of their legal advisers or such as are created by their legal advisers; these plaintiffs have no independent belief about the legality and justness of their claims. There are many simple-minded honest plaintiffs who think that when their cases are true, the judge must decide in their favour, and they become angry when for want of proper evidence, their cases fail.

There are plaintiffs whose honest beliefs at the beginning are only the statements of person or persons in whom they have implicit confidence; some of them may launch into litigation half-heartedly under the influence of a third party, but in the course of litigation, their expenses and troubles help to generate an enthusiasm and a strong belief in their own cases.

The people who are accustomed to litigation either as plaintiffs or as defendants or as helps to the plaintiffs or the defendants, sooner rush to court for enforcement of their claims than those who are unaccustomed, other things being equal.

SEC. 2.  
The prosecutor's mind.

§ 2. The prosecutor in a criminal case, may be a private complainant or a public official. In cases sent up by the police for public prosecution after investigation, the investigating officer may feel so strongly for the truth of his case, that in case of acquittal he may feel that a great miscarriage of justice has taken place.

The private complainant may have made a bonafide complaint which he believes or may make a false complaint. The machinery of the criminal law may be utilised for harassing and injuring others, maliciously or from any other motive. A false criminal complaint may be useful to the wicked, against a man of position and respectability; whereas a false money claim may be useful to the wicked, against a poor man to whom loss of money is a greater evil than short imprisonment.

A strong instinct of revenge whether in the naked form of ordinary revenge or transformed form of retributive justice is of value, for bearing the troubles and expense of a private prosecutor.

SEC. 3.  
The Defendant's mind.

§. 3. The honest defendant when claim is true confesses or absents himself and allows an exparte decree, But sometimes an honest man may fall under the influence of evil adviser or advisers. There are also some whos evil genius is roused up when a claim is pressed against them in court and they raise all sorts of false and obstructive defences. When the plaintiff's suit is false, the defendant may find that his true defence would be incapable of being proved, and put to that condition, many an honest man may raise entirely false defences. Many an honest defendant feels aggrieved against the judge even when the defence fails for want of proper evidence, When a suit comes as a surprise and the defendant may require a good length of time to search for and secure evidence to state correctly the nature of his full defence and to prove the same, he should be allowed sufficient time for the purpose.

Law's delay is a great evil. The defendants in many cases make false defences to put off the day of submitting to



justice ; and in courts where adjournments are liberally allowed or delay takes place in hearing for congestion of work, many a defendant is tempted to make a false defence to delay payment of just debt or to enjoy for some time more the profits of a property to which there is no title.

§ 4. A pleader in Bengal has to discharge the office of an attorney as well as that of a counsel. Pecuniary gain is one of the strongest motives of the human mind. Every lawyer feels pleased towards the client who pays him handsomely. The money of a client subconsciously tends to predispose every lawyer who is an ordinary human being in favour of his client ; and in some cases partly under this subconscious bias and partly owing to his personal knowledge about the litigants and the witnesses, he may happen to believe strongly in the truth of the case he represents although the final decision of the judge may finally turn in a different way.

SEC 4.  
Legal practitioner's  
mind

The tendency to growth of a party-spirit transient or more permanent under suitable conditions, is an attribute of the human mind. The legal practitioner whether as a pleader or an attorney or an advocate, may sometimes feel interested in the success of his client's case, under the impulse of this party-spirit without any reference to the justness of his client's case.

Every client puts himself under the protection of his pleader or attorney or counsel ; the spirit of a patron is also inherent in human nature. Under the impulse of this sentiment of being a patron, the legal practitioner may sometimes feel interested in the success of his client irrespective of any reference to the justness or otherwise of his case.

Thus, the impulses springing from love of pecuniary gain, party-spirit, and spirit of patronage may influence subconsciously in many cases, and may consciously influence in some cases, which make the legal practitioner personally interested to some extent more or less in the success of his client. The success of the cause which the legal practitioner represents, always tends to enhance the good-will of the business of the particular legal practitioner, and this fact tends to make him personally interested in the success of his client.

The ideal of the legal profession is a very high one and the majority among them consciously make every endeavour to discharge their professional duties according to the high ideal of the profession. But as human beings, not the most careful amongst us, can always avoid the influence of any pernicious bias working in our sub-conscious mind. In this material age, every legal practitioner and his family must live according to a certain standard of living, and when this money is not forthcoming and there is keen competition, it is not at all unnatural, if here or there, there be a few cases of falling off from the high professional ideal.

The guiding principle of every legal practitioner's conduct is not success of his client but to help the court to arrive at a true, just and fair conclusion in every case. But the sub-conscious interest in one's client's success, may tamper his efficiency even unknown to himself. The members of both the Bench and the Bar have one and the same end, namely to find out truth in every case and to deal out justice in every case; they are members of the same machinery for the same end, namely the administration of justice. The judge is the impartial arbiter. The legal practitioners who are to help the rival litigants, can not always avoid the effect of any sub-conscious bias of party-spirit or of patron-spirit. But the bias caused by personal pecuniary gain may be removed, if the legal practitioner ceases to be a sort of paid servant of the client whose cause he espouses. How this can be best done, is a question of Legislation for each country according to circumstances.

There are some litigants who think that on payment to their legal advisers, they have hired their intellects; and that their legal advisers should use their intellects in every way to help the success of their cause. But this immoral expectation is the very reverse of the high ideal of the legal profession namely that they are soldiers of justice and shall fight only for the advance of justice. In spite of the operation of the powerful impulse for personal gain against this high ideal, the majority in virtue of their high moral character, live up to this high ideal in their professional life. Under such a circumstance, it may be reasonably hoped, that a still greater majority in virtue of their strong sense of duty, will

sufficiently and satisfactorily protect their client's individual interests so far they can be protected with honour and with honesty—under any scheme of reform in which the legal practitioners may not be directly paid by their clients.

§ 5. The term "Legislation" is ordinarily restricted to the process of expressly and openly making Law by a special department of the state. But the state is the *mother-spring* of all political laws.. All non-political laws primarily had not state as their origin. Law in a non political sense is any rule of conduct recognised as possessing the special binding character of Law by the Legal consciousness of the society. Any organic group of individuals more than one individual, constitutes a society, A family is a society. A number of families in a village may constitute a village society. A number of villages may form one society. Among men, there may be organizations for various purposes and on various lines. There may be a society of men on the basis of following the same trade or the same profession. There may be a society on the basis of following the same religion. The same individual in different capacities may belong to different societies. A number of thieves may form a society ; a number of holy men who have devoted their lives for service of others, may form a society. The political organization of a number of persons as subjects of one and the same political state is only a form of society. The different subjects of the same political state may belong to different religious societies, Again, different political states may belong to the same religious society. A state may be composed of populations of different types and standards of civilisation. The same type and standard of civilisation may contain different political states. The main source of the vital force of a political state is in its military power. The social organization called the political state, tends in virtue of its military prowess, to exercise higher authority, than the authority of the other social organizations whether based on religion, or similar culture and civilisation, or on trade or on industry or on literature and fine arts, or for some philanthropic purpose &c.

SEC. 5.  
Legislation.

The State in virtue of its military prowess dominates by influencing the instinct of fear. Religion also through beliefs dominates mostly by influencing the instinct of fear. It is,



therefore, that political social organization (state) and the religious social organization sometimes exercised jurisdiction, each in a certain department.

Every type of social organization has its law. The psychological sanction of the law is in the facts which tend to bring about an obedience to the law, by influencing the human mind. The political social organization in virtue of its military prowess and the habit of obedience generated by military power, tends to undertake the enforcement of the laws of other social organizations relating to members included in the political social organization, but the extent may differ greatly in different cases.

The unifying strength and authority of the state increases when the interests of all the various legitimate social organizations of man coalesce and thoroughly harmonise with the interest of the political organization called the State. The narrow conception of law that it is always state-law, is due to the very high development and very great increase of power of modern states.

English Law developed through the process of decisions of the Judges. In every case of dispute, when a matter went before the Judge, the law was enunciated. Every man is a born judge and in every case of dispute in society owing to conflict of interests, there was a decision. The decision was of any person or persons, whose decision carried weight with the disputants and secured ordinarily in most cases an obedience to the decision. This process has been going on always and is still going on. *This is a Universal social fact.* The dispute may be within the family, or in a village body, or in a body of traders. or in a class of mechanics, or in a religious society or within any other society.

*This universal social fact* is an important mother-spring of all non-political law. In every society, these decisions give rise to customs, usages, either by repetition of similar decisions under similar circumstances, or by recognition of existing ways of behaviors (usages and customs) however they might have originated. *The universal social fact aforesaid* is a natural spontaneous method of law-making of non-political law. The judicial tribunals by indirectly and stealthily making law through judicial decisions, follow only a natural

spontaneous law of all social life. The existence of a specialised law-making body in our highly-developed modern states, has made the following of a nature's process by our judicial tribunals become an indirect and a stealthy one. No legislature will be ever able to define and stereotype laws in such a way as to make making of laws by judicial tribunals impossible. Judicial tribunals may try their best exercising their best intelligence and best honesty never to depart from the letter of the law as laid down by legislature but they can never entirely stop the nature's process of evolution of law through individual judicial decisions as much as they can not stop the operation of the law of gravitation.

The legal codes whether compiled by a learned man or by a religious man or by a political state, ordinarily codify the law as is recognised to be law by the prevalent legal consciousness—the particular contents having originated in judicial decisions or in customs and usages recognised by judicial decisions or in customs and usages not so recognised—with such changes and improvements as the compiling authority added. When the changes and improvements are introduced by the state, the state should introduce only such ones as it could enforce in virtue of its high prowess. Any learned authority or religious authority should introduce such innovations of which he could secure obedience by force of influence of his authority and by force of his arguments or through help of some political state. Anything introduced which would neither be followed nor could be enforced, may be introduced but then that would remain mere dead letter.

The sovereign or ruling power of a political society in virtue of being in sole possession of military strength, may enforce laws in its self-interest, and in course of ages these laws may enter the legal consciousness of the whole society as just, fair and equitable laws in virtue of their prevalence from hoary past and owing to utility and benefit in their preservation.

Steam, electricity, machinery, modern commerce, modern industries, the competitive ideal and the material ideal of the present age, the Printing-press and the vast growth of literature, have introduced great disturbing forces which have ushered in the modern civilisation. These forces are working

all over the earth and their work is going on. So long a society remains stationary surrounded by a stationary environment, no change in law becomes necessary, if the laws had attained full development in the stationary society. But when everything is dynamic and changing, change in the laws becomes essential, adapting to changes within the social body and in the environment. The highly evolved modern political states which keenly watch the welfare of the subjects of the state, are therefore compelled to have a separate organization for law-making or Legislative Body to change and make laws according to requirements for the progress and preservation of the society. The Legislature of modern states is thus a special contrivance which has become necessary in our highly dynamic modern age. The mind of the Legislature in the process of law-making, to act efficiently, must follow the nature's process of evolving law through judicial decisions. Every member of the Legislature must take the position of the judge and shall put before him all the possible cases that might arise in future. The happening of a few cases not met by existing law in most cases gives rise to necessity for a new law. On the basis of them and by an intelligent exercise of imagination in considering possible future cases, a member of a Legislative body shall have to decide what ought to be the law. The Law may be of a civil nature or a criminal nature. The Legislative mind shall have to consider whether the problems before them are to be best met by a civil law or by a criminal law.

Imagination is of high value in scientific discoveries. Imagination is of equal value in making of law. The greatest and highest good of the greatest number of the subjects of the particular state is a sound controlling and regulative principle in all Legislation.

The members of the Legislative bodies of large modern states are very few in relation to the vast number for whom they legislate. The Legislative mind in these Legislatures shall not only be highly *imaginative*—imagination being strongly controlled by vast and manifold experience of actual life and feelings of all classes and types of the subjects of the state, but this Legislative mind should be also of *broad and catholic sympathy* possessing capacity to have echoes within



themselves of thoughts, feelings, conations of all classes and all types of the individuals belonging to the particular state. The Legislative mind must possess also all experience relevant for the matter of the particular legislation; where the requisite experience can be had only from experts, their opinion should be consulted and respected. No practical Legislature can have the ideal philosopher's legislation of ideal states which exist no where. The Legislative mind of our modern Legislatures shall have to take men as they are and shall have to consider all the favourable and opposing forces as they actually exist, and then shall have to make the best possible practical law under the circumstances. Our modern judges have no recognised express right to legislate but in applying the principles of Justice, Equity and good conscience in cases not provided by existing law, they are influenced by the spirit of their age, where they decide correctly. The social conscience in legal matters thus objectifies itself through judicial decisions in these cases. In the interpretation of the various laws made by the Legislature, they may follow certain recognised rules. But the personal element of the Judge's mind and the influence of his environment upon him, can not but help exerting some influence upon the same. The better the Judge's mind throbs in harmony with the spirit of his age—so far it is one helping the preservation and progress of the particular political society (state including all subjects) to which the Judge belongs,—his indirect legislation through judicial interpretation, is likely to be better legislation for the particular society.

But all laws of a political nature had origin in the sovereign and are laws in the strict Austinian sense. The Legislative power of the sovereign has been always necessary for making of such laws. The following kinds of law may be called political laws.

The laws for the self-preservation and welfare of the sovereign portion (the ruling portion) of a state *i.e.*, for self-preservation and welfare of the political organization which creates a State, are strictly laws in origin and nature of the Austinian sense of law. These laws are orders of the sovereign and are primarily enforced under the authority of the sovereign. A watchful and vigilant sovereign must be

changing these laws sometimes in anticipation and sometimes as occasion arises, wherever necessary for its self-preservation and welfare. The laws about revenues, about military department, about war, about relation with foreign State and foreign subject, about loyalty, belong to this department.

A big state may grow by incorporating many small states. Laws for proper control of former centres of powers and authority, would be also Laws in the strict Austinian sense.

As a sovereign should always take proper measures to safeguard his interests from encroachment by foreign sovereigns, so within the body of the political society, powers may grow who may abuse their powers ; it may become necessary to protect individual subjects from oppression of the large powers. Large Railway Companies, Large Steamer Companies, combinations of large capitalists, large industries which have killed out all small competitors, large labour combinations, or other well-organised powerful combinations may arise and in this competitive age, in virtue of their great capital and great resources, or in virtue of their unity and organization may wield a power which unless checked by proper legislation, may prove enemical to public welfare. These large powers within the state may require to be controlled by law in the strict Austinian sense.

The state-officers enjoying powers, may require to be controlled by laws in the strict Austinian sense to protect the subjects from abuse of such powers.

The doctrine of *Laissez faire* (let alone) restricts state-legislation to maintenance of internal order and defence of the community from external foes ; and would not allow interference of individual freedom by state-legislation, for advancement of other ends. It believes that the greatest good of the community can be best advanced by confinement of the state's power, legislative or administrative, only to preservation of social order from internal aggression or external aggression ; and that in other matters, the social good can be best secured by allowing unrestricted liberty to individuals. The grounds for the existence of the two rival schools of *laissez faire* and of free unrestricted state-interference are to be sought in the individual mental constitutions, in the divergent interests and experiences, in the differences in political position and

circumstances, in the varying strength and distribution of different ideals and beliefs in different parts of the society and also in the tradition and belief-environment in which the individuals have been brought up. The rights of states relating to extent and intent of the power to legislate, are facts of historical evolution.

There can not be the same common principle or set of principles to control and regulate the power of legislation of all states in all ages and in all lands. The enunciation of right principles for controlling and regulatig the power of Legislation of a particular state can be effected only by a careful consideration of the history and existing bodily mental and environmental conditions and circumstances of the particular state and the people who are subjects of the state. The study of the psychology of the individual minds and corporate or mass mind of the particular community would be very material for determining the right constitution to regulate the legislative power of the particular state. The ideal of highest good of a community is a moving and changing reality. The particular elements going to make up that good are facts of historical growth for each community appearing in the community's consciousness. This consciousness is always the consciousness of individual personalities and in its actual manifestation possesses a wide fringe or margin in which there may be diametrically opposite views and in which there may be many views open to considerable doubt. A course of legislation which at one time, may appear as promoting the highest good of the community, may be subsequently found in the light of experience as having been mischievous and as having retarded progress. Difficult problems may arise relating to the extent and intent of the state's right to encroach upon the Liberty of religion, the liberty of political association, the liberty of speech, the Liberty of single major persons to enter into wedlock on mutual consent irrespective of all other considerations ; or relating, to the extent and intent of the state's right to tax by encroaching upon existing rights of property ; or relating to the extent and intent of the state's right to enforce compulsory military service. In all representative governments where the representatives are those elected by majorities, they are not



strictly representative governments, but are governments of majorities or of a few leaders of majorities. Where the individual members of these majorities can think, the government can be called the government of majorities. Where these majorities merely repeat the ideas and suggestions of a number of leaders, the government is really a government of a few leaders. Whether a so-called representative government be a government of a majority or a government of the few leaders of the majority, every legislation of that government has its moral justification only by promoting the highest good of the whole community; but for mere legal justification, conformity only to the legal constitution is necessary. The study of the psychology of the subjects of a so-called Representative government would show whether it is a government of a majority or a government of only a few leaders.

The freedom of Legislators even when absolute under the constitutional law, is always practically limited. The *internal check* is in the constitution of the mind of the Legislator. The Legislator can not leap the shadow of his mind as he can not leap the shadow of his body. The legislation springs from the Legislator's mind; it can not be opposed to his mental constitution. Owing to this check, the legislation of a good paternal despot and autocrat may be highly beneficial legislation. The external check is in environmental factors. The most autocratic and despotic sovereign does not dare to enforce in practice any law made by him, which is violently outrageous to the *social moral consciousness and the social legal consciousness* of his subjects or at least the military portion of his subjects. The power of the autocrat and despot comes from his military and such an autocrat and despot can never venture to displease his army and navy to such a degree as to bring mutiny and rebellion. The controlling power of the non-military portion of the subjects of a despotic ruler upon the despot's legislation, depends upon their capacity and opportunity for successful rebellion and upon the belief of the despot relating to such capacity. Where the despot belongs to the race and civilisation of his subjects and is born and brought up in the social environment of his subjects, he shares with them his subjects' moral consciousness and social legal consciousness; and his legislation would be in harmony

with *the social legal consciousness and the moral consciousness of his subjects* except in those cases where he legislates contrary to them guided by his self-interest or owing to his possession of a mind higher or lower than the normal social mind or owing to his possession of a mind which is an aberration from the normal social mind.

When the Legislator or the Legislators are born and brought up in a civilisation and environment different from those of the subjects or possess a mental constitution different from the mental constitution of the subjects, their ethical and social legal consciousnesses may vary from those of the subjects; such legislators may honestly but unknowingly legislate against the moral consciousness or against the social legal consciousness of the subjects or may be knowingly tempted to legislate contrary to both of these consciousnesses. Such Legislators may avoid mistakes by collection of necessary informations from all classes of subjects, by possession of broad and catholic sympathy and by possession of an instinctive caution and sagacity which avoids hasty and revolutionary legislation, and slowly changes the law after mature deliberation and thorough siftings of the opinions of the subjects. Where the Legislators do not belong to the type of civilisation of the subjects and have not been born and brought up in the society of the subjects, and where they possess boundless power to defy the opinions of their subjects, the best check comes from the constitution of the personal minds of the Legislators. If they possess noble and cultured minds full of broad sympathies and an earnest desire to do good to the subjects and if they have been brought up in the lap of an ethically and intellectually superior civilisation, they may give really very good laws for the subject people. When such Legislators err, they err from ignorance about the life, ideals and requirements of the subject people. Such Legislators from the ruling race, should be selected from persons not only of large intellect and large experience but also possessing a large and noble heart and broadest and deepest sympathies.

A Legislature may be better informed and intellectually and morally superior to the majority of the subjects; such a legislature may see what is good for the people though the majority is still unable to see the good; such an ignorant



majority may be opposed to legislation of a law which will save them from disease, destitution or poverty or some internal danger or external danger. In such circumstances, the problem of Legislation becomes very delicate. The true function of a Legislature in a modern state is not only to make the state-recognised law conform to the growing and changing needs of moral consciousness and social legal consciousness, not only to provide laws for maintenance of the peace, order and safety of the society as required by changes in the mental constitutions of the people and the changes in the environment within the state and outside the state—but *it is also its duty to lead and show the path of continuous steady progress and prosperity*. The modern legislators in the light of growing expert scientific informations on questions of commerce, trades, industries, sanitation, individual and national poverty and prosperity—must shape legislation for promotion of social welfare. The legislators should not be made mere agents and servants of the people, mere recorders of the *Common Will*. They should be not only the recorders of this common social will but shall make this will a progressive one. The Legislators should be allowed sometimes to go ahead of this common will *but by the very constitution of things, they can not go much ahead*. If a law is to be *a living law and not a mere dead letter, it must be backed by a warm and vigorous social consciousness*. A law can be practically administered only by the loyal co-operation of the people and of the various classes of subordinate officials who may be related to the administration of the law. When the subordinate officials are recruited from the people, they mostly share *the moral consciousness and social legal consciousness and the intellectual convictions and opinions* of the people. When the people are hostile to a law, the practical administration will suffer according to the capacity of the people to nullify its operation under the particular historical circumstances of the occasion; the historical circumstances of the occasion may give the people a capacity as to make the law a mere dead-letter, although it stands in the statute-book of the Legislature.

The education of the popular mind is, therefore, the fundamental requisite of efficient practical administration of all progressive legislation which sees ahead of the normal



social mind. How the popular mind can be educated to appreciate and warmly support any such progressive legislation is a question of practical education under the particular historical circumstances of each case and of practical politics relating to efficient practical administration of the particular law.

In a political state containing people of the same type of civilisation, same colour, same language, and same religion, the problem of practical legislation sometimes becomes a difficult one owing to the existence of different classes, trades, professions, industries ; owing to inequality in intelligence, morality, self-control, bodily constitution, education, pecuniary position and opportunities to compete with others ; owing to clash of interests of different portions of the community.

The problem of practical legislation often becomes far more difficult by the Legislature of a political state containing various religions, creeds, races, colours, types of civilisation, languages, castes and classes. The same social legal consciousness and the same moral consciousness may not be found in all the subjects of such a unifying political state. A law or a judicial decision which is warmly applauded by one portion of such a political community may be condemned with equal vehemence by another portion of the same community. The creation of Local Legislatures is of help when the splitting lines follow only the geography of the country. But where the lines of cleavage do not follow the geography the Local Legislatures have also the same difficulties to surmount. The Legislatures of such a political state must represent not only all the interests—not only of all majorities but also of all minorities ; shall be not only supplied with all available informations but shall wait till full requisite informations are obtained ; shall concentrate in their council-halls not only persons of high intellects and extensive culture but persons of broadest and deepest sympathy with the people ; shall bring within their council-chambers the practical experiences of all classes of persons who might be affected by each particular legislation, and all sorts of expert informations. The Legislatures of such a state shall be very cautious, rather slow than hasty and shall possess considerate regard and respect for the opinions of the persons who might be affected

by the legislation. These psychical equipments of the Legislator's mind are essential in the Captains of the ship of legislation in such a complex and heterogeneous political community. When the safety of the state is endangered, it is better to be quick rather than slow, for postponed delayed necessary legislation may bring worse evils and may even lead to death of the political state.

SEC. 6.  
Relation  
between the  
Executive  
organ and  
the Judicial  
organ.

§ 6. A state in which the Executive organ and the judicial organ are one and the same, and the double functions are performed by the same machinery, the interests of the Executive Administration tend powerfully to influence judicial decisions. We have seen that the evolution of a judgment in a judge's mind depends not only upon the cognitive factors but also upon the conative emotional elements in the judge's mind. An officer responsible for maintenance of peace and order and for prevention and suppression of crimes, if he be also a Judge, will in doubtful criminal cases feel a strong impulse in his mind to punish rather than discharge or acquit. An official responsible for bringing to the coffers of the state the maximum revenue that can be realised under the existing law, if also a judge, will in doubtful cases relating to revenue matters feel a strong tendency to take the view which adds to the revenue of the state. If the Judge be not himself an executive officer but is subordinate to an executive officer in the matter of his promotion, pay, transfer, leave or other worldly matters, he—in doubtful cases—would feel a strong tendency to take a view as would please his superior. The control of Judges may be by appeal or revision by superior judges in individual cases decided by them or may be general administrative control of an executive nature exercised by superior judges not as judges but as inspecting and controlling officers or by the ministerial officers of these judges or by more than one of such methods. The control of judges may be either judicial or executive or both. The executive control is always guided by certain general administrative principles. These administrative principles should be always clearly and unambiguously stated and defined; otherwise the policy may not be uniform and may be fitful in different hands. The cost for maintenance of the judiciary is an important question in the matter of the executive control.

If there be steady pressure of a policy of maximum judicial outturn at the minimum cost, the quality of judicial work will strongly tend to deteriorate. A desire for greater financial economy, may tempt the controlling authority to demand an outturn of work more than what can be fairly had. To show capacity for control, more than a fair and reasonable outturn may be demanded. But Judges are ordinary mortals and not many among them can afford to be martyrs. The most, in such cases will tend to deteriorate morally and in the quality of their work.

The maintenance of peace and order, and the prevention and suppression of crimes, are the most important duties of the Executive. If the executive control declares emphatically for a policy of maximum possible convictions in the criminal cases that are sent for trial, the subordinate judiciary will feel a natural strong tendency to convict rather than acquit or discharge in all doubtful cases. The evolution of two entirely separate organs in a state for discharge of the executive and the judicial functions, is the best safeguard against judicial mal-administration from unfair influence of executive interests.

But a separate free uncontrolled judiciary owing to potent sway of self-conceit in sub-conscious and conscious human mind, may sometimes tend to sacrifice the legitimate and fair interests of the Executive, to make a show of its independence or to show its disregard for the Executive. But thorough separation of the judicial and the executive functions, shows a higher political evolution of a state and a community. The harmonious and most efficient working of the two separate organs depends upon the superior intellectual emotional and conative evolution of the personalities who discharge these functions, upon their varied and extensive culture and experience, their broad and catholic sympathies, their thorough mutual regard and sympathy, their knowledge about their respective ends, problems, difficulties with their relative values for the promotion of the highest social good. Where men decay and pigmies are at the helm of affairs, institutions however perfect, can not save.

The general control of the judiciary by the Parliaments or by the Press, is also of the nature of executive control. Their influence upon the purity and the efficiency in the



administration of Justice from the standpoint of Justice only depends upon the nature of the influence on the particular occasions. It may promote purity and efficiency or may go the opposite way.

The control of Ignorance can never lead to good results. No amount of brilliance and intellectual superiority can supply the knowledge which can be got only from experience. In the criticism of a particular decision or the work of a particular court, the Press or the Controlling Authority may be less informed than the judge and may make sad blunders.

When the very existence of a state is in serious danger the administration of justice so far necessary in the interest of the preservation of the state may pass to the hand of the Military Authorities entrusted with the charge of safeguarding the existence of the State. In such a state of things, the political necessity of safeguarding the existence of the state, will always very properly influence all decisions of the military authorities. Justice as an end can not be had in such military courts. Every state should try to devise methods of dealing with criminals, traitors, seditionists, by which the safety of the state and the people can be safeguarded from these criminal classes, without miscarriage of justice under the influence Executive and Political interests. The segregation and confinement in fixed localities of suspected characters, keeping confidential lists of such persons and surveillance over them by the Police, demanding securities for good behaviour, are always better than convictions on mere suspicions under the influence of Executive and Political interests. The prevalence of better and more efficient administrative ways for furtherance of executive ends, always tends to greater purity and better administration of Justice. The superior administrative efficiency of the Executive, is thus, always a security for better judicial administration.

With the progress of the Human Race from a condition of wars to one of gradually increasing peace and good-will, the Judge may be required to settle disputes among the component states in Federal Governments or to settle disputes between different nations. These inter-state and international judges will be controlled by the gradually evolving Legal consciousness of the people of the states and of the nations and will

control as exponents of the Legal consciousness which rules in the heart of those who are controlled. Such Judges are the voices of the beating hearts of peoples and nations. Such Judges can never rule without their mental enfranchisement from unfair executive influence of the interests of a particular state or a particular nation. The evolution of a strong universal Legal consciousness in the whole Human Race on this earth, respecting the fair and equitable rights of all men in all sorts of groups—as classes, castes, tribes, races, colours, religions, nations, States—is the only efficient and abiding bulwark to save Humanity from the horrors and miseries of wars.





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## Some of the Errata in this edition.

Page	Line	Error	Correct Expression
31	8	Cognitive	practical
44	38	Closed-room	close room
51	5	in	into
61	9	wouud	wound
72	5	clement	element
72	34	not—self	not-self
84	8	forth with	forthwith
85	22	o	of
85	24	into	in
86	32	Love-smitteau	Love-smitten
91	18	part	past
95	20	then	these
95	33	footstips	footsteps
112	38	may	way
155	27	he	a
158	39	object	objects
158	39	is	are
159	35	desire ;	desire,
167	Last line	natural parts	natural powers
211	32	Justice bockburn	Justice Cockburn
221	4	on	one
229	3	in	into
236	11	against	towards
245	37	follow.	to follow
263	23	hi	his
276	5	hsa	has
278	25	to	in
315	38	fo	of
319	1st line	person	persons
334	23	for	of
369	6	for	of
370	1	an	a
411	31	for	to
413	last line	espect	respect
415	8	martyars	martyrs
415	33	mutul	mutual

In Page 98 line 26 put comma (,) after "identical"

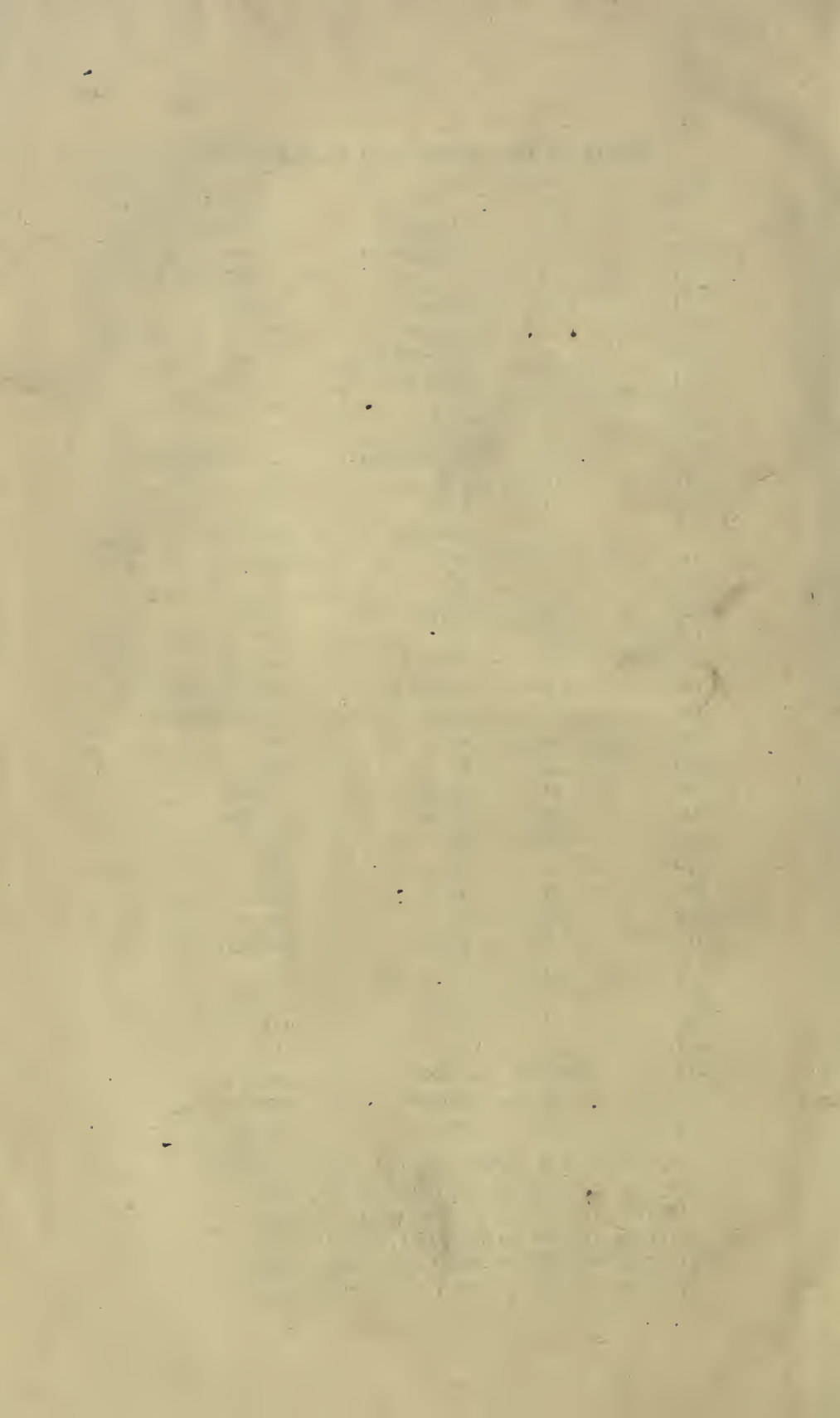
In Page 116 line 19 put (,) after "litigation"

In Page 173 line 27 put (—) after "impulses"

In Page 237 line 20 transpose (,) before "but"

In Page 309 line 12 read "state," after "modern"

In Page 340 line 4 read (,) after "condition"







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